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THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Part 101

(T.D. 86-14)

Revision of Criteria for Establishing Parts of Entry and Stations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of revised criteria.

SUMMARY: This notice is to advise the public that Customs has revised the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. The revision set forth in this document modifies and expands upon certain criteria which Customs has followed since 1982 in evaluating these requests. It reflects the increased minimum value for commercial entries and deletes any reference to informal entries. In addition, the revision requires a commitment by any applicant that is attempting to qualify for port or station status by satisfying the cargo workload standard (2500 consumption entries), to make optimal use of electronic data transfer capability to permit integration with Customs Automated Commercial System.

The revised criteria will permit Customs to obtain more efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Richard C. Coleman, Office of Inspection, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

By T.D. 82-37, published in the Federal Register on March 9, 1982 (47 FR 10137), Customs set forth the criteria it uses in determining whether to grant requests for the establishment of Customs ports of entry and stations. Under the heading "Criteria" of T.D. 82-37, number (2)(b) states the following:

(2) The actual or potential Customs workload (minimum number of transactions per year), in the area must be: (b) 2,500 consumption entries (formal (over $250 in Customs value), informal (under $250 in Customs value));"

Since the publication of T.D. 82-37, Customs has implemented the Automated Commercial System (ACS) which provides a means for the electronic processing of entries of imported merchandise. ACS is a national teleprocessing system that encompasses approximately 2,000 programs and processes 250,000 transactions per day. ACS includes a number of interdependent modules and computer-to-computer interfaces with the private sector which, together, automatically process enforcement and statistical data spanning the full range of Customs processing for imported merchandise. Current ACS modules are Antidumping and Countervailing Duty, Automated Broker (Importer) Interface, Bonds, Collections and Revenue, Drawback, Entry Summary Processing, Fines, Penalties and Forfeitures, In-bond, Information Exchange, Liquidations, Manifests, Protests, Quota, Carrier and Port Authority Interfaces, Cargo and Entry Summary Selectivity, and Warehouse. It is anticipated that ACS will be fully operational in 1987. To take full advantage of the potential of ACS to expedite the entry of imported merchandise, in determining whether to grant requests for the establishment of Customs ports and stations, Customs will now require a commitment by the applicant port or station to make optimal use of electronic data transfer capability to permit integration with ACS.

In an unrelated matter, by § 206 of Pub. L. 98-573, the Trade and Tariff Act of 1984, Congress amended § 498(a)(1), Tariff Act of 1930 (19 U.S.C. 1498(a)(1)), by increasing the statutory limit for informal Customs entries from $250 to $1,250. After thorough consideration of the issue, Customs determined that, with the exception of specific exclusions, the informal limit for all articles would be set initially at $1,000, with the option to increase it to $1,250 in the future. This change was reflected in amendments to the Customs Regulations published as T.D. 85-123 in the Federal Register on July 23, 1985 (50 FR 29949). Accordingly, a further criteria revision reflects the increased minimum value of $1000 for commercial entries, instead of $250. In addition, all references to informal entries in the criteria are deleted since they are not a factor in determining potential cargo activity. As a result of these changes, number 2(b) under "Criteria" listed in T.D. 82-37, is revised to read as follows:

(b) 2,500 consumption entries (each valued over $1000). The applicant must commit to optimal use of electronic data input means to permit integration with any Customs system for electronic processing of entries.

These changes will permit Customs to obtain more efficient use of its personnel, facilities, and resources and provide improved service to carriers, importers, and the public.

All of the other criteria in T.D. 82-37 will continue to be used in evaluating requests for new service.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: January 10, 1986.
FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, February 5, 1986 (51 FR 4559)]

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19 CFR Part 134

(T.D. 86-15)

Country of Origin Marking of Imported Pipe and Pipe Fittings of Iron or Steel

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of required alternative marking methods.

SUMMARY: In a notice previously published in the Federal Register, Customs acknowledged that certain pipe and pipe fittings of iron or steel, cannot be marked with the country of origin by any of the methods prescribed by § 207 of the Trade and Tariff Act of 1984, without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles. The notice solicited public comments as to which pipe and pipe fittings of iron or steel cannot be marked by any of the prescribed methods. This document sets forth which articles may be exempted from the marking methods prescribed by § 207 and are eligible for marking by alternative methods.

EFFECTIVE DATE: February 5, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On October 30, 1984, the President signed Pub. L. 98-573, the Trade and Tariff Act of 1984, which made numerous changes to the

Tariff Act of 1930. Section 207 of Pub. L. 98–573 amended § 304, Tariff Act of 1930 (19 U.S.C. 1304), requiring, without exception, that all imported pipe and pipe fittings of iron or steel be permanently marked to indicate the proper country of origin of the article by means of die stamping, cast-in-mold lettering, etching, or engraving.

Pursuant to 19 U.S.C. 1304, every article of foreign origin, or its container, imported into the U.S., shall be marked in a conspicuous place as legibly, indelibly, and permanently *as the nature of the article or its container will permit*, in such a manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, unless specifically exempted. Part 134, Customs Regulations (19 CFR 134), sets forth the country or origin marking requirements of 19 U.S.C. 1304.

It was brought to Customs attention that certain pipe and pipe fittings of iron or steel cannot be marked by any of the four prescribed methods without rendering such articles unfit for the purpose for which they are intended or violating industry standards for such articles.

Under the laws of statutory construction, § 207 and 19 U.S.C. 1304, which it amends, should be read in *pari materia*, so that pipe and pipe fittings which by their nature will not permit marking by any of the four prescribed methods will not be barred from entering the U.S. Such a construction would allow for alternative methods of marking, such as stencilling or tagging in bundles. Accordingly, by a document published in the Federal Register on January 9, 1985 (50 FR 1064), Customs solicited public comments as to which pipe and pipe fittings of iron or steel cannot be marked by any of the means prescribed in § 207 without rendering such articles unfit for the purposes for which they were intended or violating industry standards for such articles.

Customs has already taken the position that the new marking requirements will apply to iron or steel pipes, tubes, and blanks therefor, as defined in Headnote 3(e), Schedule 6, Part 2, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), which covers tubular products, including hollow bars and hollow billets, of any cross-sectional configuration, by whatever process made, whether seamless, brazed, or welded, and whether with an open or lock seam or joint, of the kind classifiable under items 610.30–610.58, 688.30, TSUS. However, it does not include hollow drill steel of the kind defined in Headnote 3(e), Schedule 6, Subpart 2B, TSUS, and classifiable under items 607.05–607.09, TSUS. By a correction document published in the Federal Register on January 31, 1985 (50 FR 4524), Customs stated that the new marking requirements of § 207 will also apply to pipe and tube fittings of iron or steel (bends, branches, drains, reducers, etc.) of the kind classifiable under items 610.62–610.93, 688.32, TSUS, as well as those pipe and

tube fittings of iron or steel of the kind classifiable under items 606.71 and 606.73, TSUS.

Required Alternative Marking List

After reviewing the numerous comments received in response to the notice and the best technical information available, Customs has identified certain categories of articles which cannot be marked by any of the methods prescribed by § 207 without impairing the articles with respect to their intended use, or without violating applicable industry standards. The categories of articles so identified were listed and communicated in the form of a telex to Customs field offices on March 18, 1985, and subsequently amended by telexes dated April 15, 1985, and May 13, 1985. Copies of those telexes were made available to all interested parties. The purpose of this notice is to publish in a final and definitive format the categories which may be marked to indicate their country of origin by methods other than those prescribed by § 207.

Inasmuch as this notice is merely a restatement of existing requirements and contains no substantive changes in the previously adopted rules, and because the requirements of § 207 became effective on November 14, 1984, no delayed effective date is necessary.

Categories of Articles Exempted From § 207 Marking Requirements; Thin-Walled Pipes and Fittings

Carbon and low-alloy steel tubing or fittings with wall thicknesses less than .08 inch (this exception is provided because the statutory methods of marking would be illegible on the relatively rough surfaces of these articles).

High-alloy (nickel, chromium, molybdenum, or combinations thereof) articles which have wall thicknesses less than .08 inch and which the importer certifies (in writing to the district director) will actually be used in an application or environment in which marking by a statutory method would substantially diminish or destroy the utility of the articles.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers:

Small-Diameter Pipes and Fittings

Fittings having nominal diameters of one-fourth inch or less.

Pipes having inner diameters of 1.9 inches or less.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Other Fittings

Fittings which meet American Petroleum Institute (API) specifications (or equivalent mill specifications) 5AC or higher, including 5AX and 5AQ.

High-alloy (nickel, chromium, molybdenum, or combinations thereof) fittings ordered to National Aeronautic and Space Administration (NASA) or military specifications which prohibit marking by any of the statutory methods.

Small galvanized iron fittings of the following types (dimensions stated are nominal diameters):

Elbows 90 degrees—one-eighth and one-fourth inch.
Elbows 45 degrees—one-eighth and one-fourth inch.
Street elbows 90 degrees—one-eighth and one-fourth inch.
Street elbows 45 degrees—one-eighth and one-fourth inch.
Tees—one-eighth and one-fourth inch.
Crosses—one-eighth and one-fourth inch.
Couplings (sockets)—one-eighth and one-fourth inch.
Locknuts—one-eighth, one-fourth, three-eighths, and one-half inch.
Bushings—one-fourth by one-eighth, three-eighths by one-eighth, three-eighths by one-fourth, one-half by one-eighth, one-half by one-fourth, one-half by three-eighths inch.
Unions—one-eighth, one-fourth, and three-eighths inch.
Caps—one-eighth, one-fourth, three-eighths, and one-half inch.
Plugs—one-eighth, one-fourth, three eighths, one-half, three-fourths, and one inch.
Reducing elbows—one-fourth by one-eighth inch.
Reducing tees—one-fourth by one-eighth inch.
Reducing coupling—one-fourth by one-eighth inch.
Spun iron fittings with a Brinell hardness number in excess of 500 (five hundred).

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Oil Country Tubular Goods

Oil Country Tubular Goods (OCTG) which meet API specifications (or equivalent mill specifications) 5AC or higher, including 5AX and 5AQ.

Solution-annealed austenitic ferritic duplex stainless steel.

"Green" tubes which are two and seven-eighths inches or smaller in outer diameter, and which are certified by the importer (in writing to the district director) to be for redrawing.

Required alternative marking method: paint stencilling.

Line Pipe

High-test line pipe meeting API specifications (or equivalent mill specifications) 5L grades X-42 and higher.

Pipe meeting API specification (or equivalent mill specification) 5LU.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

Mechanical Tubing

Mechanical tubing which meets American Society of Testing and Materials (ASTM) specification A–511, A–512, A–513, A–519, A–554, A–787, or A–789.

Any other such articles for which the importer certifies (in writing to the district director) that the tubing will actually be used in an application or environment in which marking by a statutory method would substantially diminish or destroy the utility of the tubing.

Required alternative marking method: paint stencilling.

Coated Pipe

Galvanized, plastic-coated, aluminized, galv-alum, porcelain enamel-coated, and vinyl-coated pipe.

Required alternative marking method: paint stencilling, or tagging of bundles or containers.

"Mother" Tubes

So-called "mother" tubes which are certified by the importer (in writing to the district director) to be for redrawing.

Required alternative marking method: paint stencilling.

Structural Pipe

Structural pipe which meets API specifications (or equivalent mill specifications) 2H and 2B.

Required alternative marking method: paint stencilling.

Pressure Tubing

Pressure tubing which meets ASTM specification A–161, A–178, A–179, A–192, A–199, A–200, A–209, A–210, A–213, A–214, A–226, A–249, A–250, A–333, A–334, A–423, A–557.

Tubing for which the importer certifies (in writing to the district director) that it is for actual use in an application or environment in which marking by one of the statutory methods would substantially diminish or destroy the utility of the tubing.

Required alternative marking method: paint stencilling.

Ornamental Pipes, Tubes, and Fittings

Ornamental pipes, tubes, and fittings of all types, having highly polished surfaces.

Required alternative marking methods: Each piece is separately marked with a durable tag or sticker securely affixed to the article, or is separately wrapped in a protective wrapping which clearly indicates the country of origin.

SPUN IRON PIPE

Spun iron pipe with a Brinnel hardness number of 500 or more.

Required alternative marking methods: paint stencilling, or tagging of bundles or containers.

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: January 22, 1986.
FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, February 5, 1986 (51 FR 4559)]

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19 CFR Parts 18, 24, 112, 113, 141, 144, 146, 178, and 191

(T.D. 86-16)

Foreign Trade Zones; Specialized and General Provisions

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises Customs Regulations relating to foreign trade zones to provide a new audit-inspection method of zone supervision by Customs. A foreign trade zone is a defined area, considered to be outside the Customs territory of the U.S., where certain lawful activities can be conducted with a minimum of formalities. A zone provides a site at or adjacent to a Customs port of entry where operations involving foreign merchandise can take place, which otherwise might have been done abroad for tariff and trade reasons. The revision sets forth the general provisions applicable to the administration of all zones and other specialized provisions applicable to subzones and zone sites. In addition, changes in the language of the regulations will clarify some provisions, eliminate inconsistencies, and conform the regulations to current administrative practices.

EFFECTIVE DATE: May 12, 1986.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: John Holl, (202-566-8151);

Inventory Control and Recordkeeping System Aspect: Marcus Sircus, (202-566-2812);

Inventory Control and Recordkeeping System Aspect: Marcus Sircus, (202–566–2812);

Appraisement and Valuation Aspect: Myles Flynn, (202–535–4134);

Liquidated Damages, Penalty and Suspension Aspect: William Lawlor, (202–566–5856);

Economic Aspect: Daniel Norman, (202–535–4138).

All of the above Customs personnel are located at: U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

BACKGROUND

In 1934, Congress enacted the Foreign-Trade Zones Act to expedite and encourage foreign commerce. The Act created domestic foreign trade zones and was designed to stimulate international trade and create jobs in the U.S. At that time, zones were envisioned as storage, manipulation, and transshipment (exportation) centers. In 1950, an amendment to the Act was passed, authorizing manufacturing and exhibition inside zones. Foreign trade zones (zones) are areas within the U.S. (but outside the "Customs territory of the U.S.," as defined in § 101.1(e), Customs Regulations (19 CFR 101.1(e)), where foreign or domestic merchandise may be brought for manipulation, manufacture, assembly or other processing, or for storage or exhibition, provided that these operations are not otherwise prohibited by law. Foreign merchandise may be brought into a zone without being subject to the usual Customs entry procedures and payment of duty. Foreign or domestic merchandise may be exported or entered into the Customs territory from a zone. Quota restrictions do not normally apply to foreign merchandise in a zone. Merchandise moved to a zone for export may be considered exported upon its admission to a zone for purposes of excise tax rebates and drawback.

Zones are established under the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u), and the general regulations and rules of procedure of the Foreign-Trade Zones Board (the Board), Department of Commerce (15 CFR Part 400). Part 146, Customs Regulations (19 CFR Part 146), governs the admission of merchandise into a zone; the manipulation, manufacture, destruction, or exhibition in a zone; the exportation of merchandise from a zone; and the transfer of merchandise from a zone into the Customs territory.

Typically, a foreign trade zone is a fenced-in area with a general warehouse type building or buildings and access to all modes of transportation. Space is available for leasing to firms for authorized zone activity. Some zones have industrial park characteristics or are located within such facilities and have lots on which zone users can construct their own facilities. Subzones are locations au-

is in the public interest but cannot be accommodated within an existing zone.

Between 1934 and 1970, just 12 zones were approved by the Board. At this time, there are 109 general purpose zones and 60 subzones. It has been estimated that the volume of business in zones has multiplied substantially from 1970 to the present with zones now handling about $4.8 billion worth of merchandise each year.

As can be appreciated from the foregoing, the number of zones and the operations conducted therein have increased tremendously in recent years. Historically, Customs has administered zones and their operations by the physical presence of Customs officers at the various zone locations. However, as time has passed, Customs staffing available to supervise zones has declined while zones have continued to proliferate. This has resulted in delays in the approval of activation of a given zone, and has presented problems for Customs in the exercise of effective control over some zone operations, especially subzone manufacturing activities. Therefore, Customs undertook an effort to devise a method to reduce Customs staffing requirements in zones and other areas (notably bonded warehouses) without endangering the revenue or law enforcement priorities, while also not hampering the growth of those areas and not impeding commerce.

The audit-inspection program approach to administration of those areas of Customs responsibility, which de-emphasizes the physical presence of a Customs officer to supervise each transaction, was successfully implemented in regard to the operation of bonded warehouses (see T.D. 82-204, published in the Federal Register on November 1, 1982 (47 FR 49355)). Audit-inspection is a method of supervision based on spot checks and audits of foreign trade zone activities as represented in records maintained by the zone operator. This method is substituted in lieu of physical on-site supervision by Customs when merchandise is admitted to, transferred from, or processed in the zone.

The principal advantage for Customs of audit-inspection is that it requires fewer Customs personnel to administer the zones. The principal advantages for the importing community are that (1) merchandise may be admitted, transferred, or processed without a Customs officer being present, allowing increased flexibility in zone operations, and (2) for most zones, the reimbursable cost paid to Customs is reduced. Audit-inspection is based on several procedures, which are essential for its proper functioning and success. These procedures are:

1. The determination by Customs of the identity and nature of the merchandise through examination before or upon admission to the zone so that the initial responsibility of the operator for the merchandise can be determined.

sion to the zone so that the initial responsibility of the operator for the merchandise can be determined.

2. The issuance of a prior permit by Customs to the zone operator for admission, transfer to the Customs territory, and processing in the zone.

3. The assumption by the zone operator of responsibility for the merchandise, maintaining records concerning the merchandise, and physical supervision of the zone. Quantities of merchandise received at the zone and transferred to the Customs territory are determined jointly by the zone operator and the carrier.

4. The performance by Customs of spot checks and audits to determine whether the zone operator is properly supervising the zone and maintaining records of the merchandise. The cost of the spot checks and audits is reimbursed to Customs through an annual fee charged the zone operator for this service.

5. The assessment of liquidated damages in an amount sufficient to ensure performance of the operator's duties and responsibilities under the rules and regulations needed for proper zone supervision and recordkeeping.

6. The temporary suspension by Customs of zone operations which do not comply with the rules and regulations.

It is noted that Customs initiated use of the audit-inspection method in August 1983, on the basis of voluntary agreements between Customs and zone operators. At present, 12 subzones and 6 general-purpose zones have entered into voluntary agreements to use the audit-inspection method to administer their operations. Customs has taken that limited experience under the zone audit-inspection method into account in preparing this revision.

To implement the audit-inspection method of supervision in foreign-trade zones, it is necessary to substantially revise Part 146, Customs Regulations (19 CFR Part 146), concerning the administration of foreign trade zones, and to revise to a much lesser extent, Parts 18, 24, 112, 113, 141, 144, 178 and 191, to conform them to changes made by the revision to Part 146. Accordingly, by notice published in the Federal Register on July 17, 1984 (49 FR 28855), an extensive revision of Part 146 and minor conforming revisions of Parts 18, 24, 112, 141, 144 and 191 were proposed. A detailed discussion of the proposed amendments to Part 146 can be found on pages 28856–28859 of the notice.

Interested parties were given until October 15, 1984, to submit written comments. However, by notice published in the Federal Register on September 11, 1984 (49 FR 35658), the comment period was extended to November 30, 1984, as an accommodation to the National Association of Foreign-Trade Zones. Approximately 150 comments were received in response to the notice. A discussion of the comments and our responses to the comments follow.

sions of the proposal. Many commenters question the reasonableness of the proposed fees, penalties and liquidated damages provisions. They also allege that the proposal is inconsistent with genrally accepted accounting principles and the Foreign-Trade Zones Act, and that it could impede the flow of commerce. Commenters further complained that the proposed regulations do not provide an orderly transition to the new audit-inspection system and that they were unduly complex and restrictive. Specific comments and our responses are as follows:

Comment: Under the proposed regulations, Customs would treat merchandise destined for a zone as imported and subject to examination prior to admission to the zone, unless a subzone or zone site qualifies under special procedures for exemption from the prior examination requirement. This treatment of zone-destined merchandise may impede or delay shipments.

Response: We disagree. Merchandise which is destined for a zone is imported, within the meaning of § 101.1(h), Customs Regulations. Under § 499, Tariff Act of 1930, as amended (19 U.S.C. 1499), imported merchandise is subject to examination in Customs territory. Therefore, examination of zone-destined merchandise is already provided for under the law. The frequency and intensity of these examinations, however, will be reduced by selective examination procedures. Also, only occasional examinations will be necessary at certain subzones and zone sites because shipments to these sites are repetitive, liability for violations is known in advance, and elaborate audit trails for checking for diversions of the merchandise exist.

Comment: The proposed regulations do not clearly distinguish between physical and record identification of merchandise. The two systems cannot work together. Record identification is the only viable system under the proposed revision.

Response: We disagree, The physical and record systems of identifying merchandise are compatible. Under the specific identification system, the zone operator maintains a zone lot control system, physically segregating his merchandise by zone lots and controlling identification of merchandise by zone lot records from admission through final zone removal. Under the record identification system, the merchandise is identified by inventory records, using a Customs-approved inventory method, *e.g.,* the first-in, first-out method (FIFO). Both methods require a reconciliation, at least annually, of physical merchandise on hand to quantities reflected by the Customs-approved inventory method. Any discrepancies would require corrective action by the operator.

The physical identification of merchandise is required to ensure reliability of admissions, inventory record accuracy, and proper zone status requests, among other things. For these reasons, it is retained in the regulations.

zone status requests, among other things. For these reasons, it is retained in the regulations.

Comment: The proposal provides no mechanism or guidance for transition to the audit-inspection method of supervision. Serious consideration should be given to grandfathering in some zones or allowing them sufficient time to change over to the new method.

Response: We disagree. Allowing some zone operations to be grandfathered in, *i.e.,* granted an exemption from the new foreign trade zone regulations, is not feasible because it would result in the perpetuation of different sets of rules for some zones. The intent of the proposed regulations is that one set of rules should govern all zone operations.

The regulatory changes will become effective as a final rule 90 days from the date of publication, except that zones with Alternative Inventory Control Systems (AICS) will have either 180 days after the publication date or to the end of their current business year to comply with the new recordkeeping regulations. This 90-day period, instead of the 30-day period ordinarily granted, will allow zone operators a sufficient period of time for bringing their inventory system into compliance with the new regulations.

Zones under the AICS are different from other zones in that the record of inventory is maintained by the zone grantee or operator, or by the individual zone firms or their agents, under the supervision of the grantee or operator, rather than by Customs. The zone grantee or operator is responsible for the posting of inventory ledgers, the supervision of individual zone firms which maintain their own inventory records, the correction of inventory discrepancies, the conducting of periodic selective inventories of open lots of all zone firms, and various additional tasks which require time and other resources to handle the paperwork associated with these tasks. Because of the complexity of operating this type of inventory control system, these zones will require more time than non-AICS zones to convert to the audit-inspection supervision system under the new regulations. For this reason zones under AICS will be given either 180 days from the date of publication of the new regulations or to the end of their business year to bring their inventory system into compliance with the new regulations. However, they will be subject to the 90-day period for bringing all other aspects of their zone operations into compliance with the new regulations.

Conversion to audit-inspection supervision under the new regulations will occur as follows:

All zone operators, except as noted below, will furnish a certification that their inventory control and recordkeeping system complies with the new regulations, a procedures manual, the date of the end of their business year, and the annual fee on or before the date the new regulations take effect, and the prescribed zone operator's bond. If these requirements are not complied with by the ef-

In addition, the following actions will be taken with respect to specific zones:

(a) *Zones where Customs has maintained inventory records.* Customs will provide a listing of inventory balances for all lots in the zone on the effective date. The operator will have 30 days to review the lot balances, conduct a physical inventory, and resolve any differences with Customs. On or before the end of the 30-day period, the operator will sign to accept the lot balances as reflecting the inventory on hand on the effective date, with such adjustments as are mutually agreed to between the operator and the district director.

(b) *Zones with voluntary audit-inspection agreements.* Zone operators will have the option of conducting a physical inventory before the effective date and certifying as to specific quantities of merchandise for which they are responsible on the effective date. Otherwise, they will be held responsible for losses and overages unless they can clearly show, with competent evidence, that the losses and/or overages occurred before the effective date.

(c) *Zones with alternative inventory control systems.* Zone operators may request postponement of the procedures manual and certification requirements until one of the following dates:

(i) 90 days after the effective date of the new regulations; or

(ii) end of their current business year.

With respect to paragraph (c), the district director may approve the request for a postponement if he is satisfied that the postponement is necessary for the conversion of the operator's recordkeeping system to comply with the requirements of Subpart B, Part 146, Customs Regulations. During the interim before the procedures manual and certification are received, the operator will be allowed to maintain the inventory and recordkeeping system as agreed under the AICS, and he need not meet the requirements of Subpart B. However, the operator must meet and follow all the other requirements of the new regulations upon their effective date. The same physical inventory option will be available for zones with an AICS as for zones with a voluntary audit-inspection agreement. If that option is not exercised, any losses or overages found after the effective date will be considered to have occurred after the effective date, unless the operator can clearly show, with competent evidence, that the losses and/or overages occurred before the effective date.

Comment: The proposed regulations are inconsistent with generally accepted accounting principles as well as modern business practices.

Response: The commenters do not point to any specific instance of inconsistency. However, we do not that Customs method of identifying merchandise by the first-in, first-out (FIFO) method does not conform to generally accepted accounting principles (GAPP) under

tifying merchandise by the first-in, first-out (FIFO) method does not conform to generally accepted accounting principles (GAPP) under which FIFO is used to determine the value of goods in an ending inventory. Customs use of FIFO to indentify merchandise expedites the movement of goods in and out of zones. It is used as an alternative to specific identification of merchandise.

Comment: While the proposed regulations provide for the removal of Customs officers from zones, there are no provisions detailing the methods and the time restraints for transmitting data and documents to Customs, particularly when a zone is remote from a Customs office. There should be a variety of mechanisms to transmit data and documents to expedite zone operations.

Response: We disagree. The regulations need not specify the method of transmittal. Many methods of transmittal, such as mail, messenger delivery, or electronic transmittal, can be accommodated so long as they can be administratively handled by Customs. There should be no problem with timely delivery of the required documentation to Customs on the part of any zone since, in order to be designated a foreign trade zone, it must be in or adjacent to a port of entry.

There are specific provisions for the timing of the transmittal and receipt of documentation by Customs from zone operators, such as in § 146.40(a) and (b), and wherever else specific provisions are necessary. In the absence of any stated provisions, documentation must be received by Customs before a permit to admit, handle or transfer merchandise can be issued.

Comment: The regulations should include a provision allowing merchandise to be temporarily removed from a zone for repair, restoration, or incidental operations and then returned to the zone.

Response: Customs has been testing such a proposal with, as yet, inconclusive results. If the test has favorable results, the procedure will be implemented on a permanent basis through a separate rulemaking proceeding.

Comment: One commenter states that Customs should not extend its concept of adjacency, in respect to subzones, beyond 35 miles from a port. Other commenters believe that subzones that are distant from ports should not be required to deliver merchandise and documentation to Customs, as is required in proposed § 146.15(a).

Response: The adjacency concept, and its application to subzones which are 35 miles from a port, is under review in a separate rulemaking proceeding at the Department of Commerce. Since this entire issue is under review, proposed § 146.15 is premature. Accordingly, it has been deleted from the final regulations.

Comment: Several commenters believe that the proposed regulations are too complicated, impose unnecessary requirements, and make zones less manageable.

Response: We have simplified the proposed regulations and removed certain requirements. The regulations, as revised, impose

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own recordkeeping and inventory control requirements. The requirements for recordkeeping are similar to those any conscientious businessman would adhere to in the supervision of his business. The revised regulations make zones more, not less, manageable. They also allow Customs to carry out its mission of protecting U.S. revenue and enforcing importation laws and regulations more efficiently.

Comment: Many commenters criticize the criteria under proposed § 146.14 for allowing domestic status merchandise to be admitted to a zone without a prior application and permit for each shipment. They believe the criteria are too stringent, particularly those involving commercially identical merchandise and merchandise which has been combined so that it has lost its identity.

Response: We agree with these comments. Therefore, proposed § 146.14 is deleted. The subject matter of § 146.14 is transferred to § 146.43, which is further amended to specify that no prior permit will be required for the admission, handling, or transfer to Customs territory of domestic status merchandise except (1) when mixed or combined with merchandise of another zone status, or (2) when so ordered by the Commissioner of Customs under certain circumstances. This latter authority on the Commissioner's part allows Customs to properly control domestic status merchandise in unusual circumstances. The zone operator must still maintain proper inventory records of domestic status merchandise as prescribed in Subpart B, Part 146, Customs Regulations, even if no permit is required.

Comments: Several commenters inquire as to the authority for Customs allowing activation of a zone under § 146.6. They also question whether this allowance is not more appropriately within the authority of either the Board or the zone grantee.

Response: Authority for Customs approval of activation of zones is found in the individual grants to the zones and subzones, as well as the Act itself. The grants contain provisions to the effect that operations at the zone shall not commence until the grantee obtains all the necessary permits from Federal authorities, and that the grant is subject to an agreement between the grantee and Customs regarding compliance with requirements for the protection of the revenue.

Section 15(b) of the Foreign-Trade Zones Act (19 U.S.C. 81o(b)) gives the Secretary of the Treasury broad authority to approve regulations for the protection of the revenue under the Act, while § 9 (19 U.S.C. § 81(i)) directed the Board to cooperate with Customs. The activation procedure is the method which Customs has chosen for protecting the revenue. Through this procedure Customs is assured that the zone is ready to receive merchandise in zone status.

Comment: Section 146.65 creates a new valuation concept, *i.e.*, "total zone value." There are a substantial number of Customs rul-

Comment: Section 146.65 creates a new valuation concept, *i.e.*, "total zone value." There are a substantial number of Customs rulings dealing with zone valuation issues. These rulings should serve as the proper guidance for Customs position on this issue.

Response: "Total zone value" may be a new regulatory term, but it is not a novel regulatory concept. It is the value provided for by current § 146.48(e). Its significance relates to the valuation of recoverable waste or scrap from a zone operation and situations where the rate of duty applicable to nonprivileged foreign merchandise is dependent on the value of the article being transferred from a zone. Section 146.65 therefore, accurately reflects the current Customs position on zone valuation matters.

Comment: Many commenters are concerned with proposed § 146.8, which authorizes the zone operator to affix and break Customs in-bond seals. Heretofore, only Customs officers could affix and break Customs in-bond seals.

Response: Since under the audit-inspection approach a Customs officer will no longer be physically present in most cases, it is necessary that the zone operator be given authority in certain areas to perform functions that were previously conducted by Customs. One of these is the authority to affix and break in-bond seals. Under the new regulation, the zone operator will report to Customs any discrepancies in seal condition. This will protect the zone operator from liability when it is determined that the loss of merchandise occurred prior to arrival of the merchandise at the zone site.

Comment: Special procedures for admitting and removing zone merchandise limited to subzones and zone sites should be extended to general-purpose zones. Also, the criteria for admittance and removal are too stringent for most zones.

Response: We disagree. The audit-inspection requirement is that a permit is required before admission to a zone or transfer to Customs territory. The purpose of proposed § 146.13 is to exempt shipments from this prior permit requirement only when they are repetitive, predictable, and relatively unchanging over a period of time. The exemption was intended to be restrictive because of Customs experience that a major portion of trade destined for zones is non-repetitive and difficult to predict.

In response to the comments on this subject, however, Customs has made a number of changes in the special procedures. First, the criteria for direct delivery are moved to § 146.39 since they are applicable only to merchandise being admitted to a zone, and § 146.13 is deleted.

Secondly, the criteria for direct delivery as they appear in § 146.39 have been simplified. There is now no requirement for direct transmittal of statistical information to the Bureau of the Census. Also, the criteria have been grouped according to those that apply to merchandise and those that apply to the operator. The specific restriction of the direct delivery procedure to subzones

the zone operator is not the owner or purchaser of the merchandise (as interpreted by Customs in Customs Directive 3530–02, dated November 6, 1984). The criteria for direct delivery ensure that not only are the shipments repetitive and relatively unchanging, but also that the zone operator is in a position to see that they remain so.

Finally, the criteria for direct delivery no longer apply to merchandise transferred from a zone for weekly entry or permit for consumption, transportation, or exportation under proposed §§ 146.63 and 146.69. Instead, the criteria for a weekly permit under the direct delivery procedure in these sections is whether the merchandise is manufactured or changed to its final form just shortly (within 24 hours) before physical transfer from the zone. These sections are necessary for assembly-line type operations where there otherwise would be little time for examination of the merchandise and furnishing of proper entry documentation after the merchandise is in its final form but before physical removal from the zone. By allowing a weekly entry based on an estimate of merchandise to be removed during the week, Customs has prior information as to merchandise to be removed and documentation to serve as the basis of physical examination of the merchandise. At the same time, the assembly-line operation need not be delayed pending acceptance of an entry and Customs examination of the merchandise.

Comment: To qualify for many of the more liberal procedures, zones must provide statistical data directly to the Bureau of the Census instead of providing a statistical carbon copy of Customs Form 214–A, titled "Application For Foreign Trade Zone Admission And/Or Status Designation" to Customs. This may be very difficult for many zone users, and it abrogates the responsibility of Customs to collect statistics.

Responses: We disagree. Customs responsibility is to support the Census in collecting foreign trade statistics. In some instances, Census has allowed direct transmittal of statistics by zone importers, relieving Customs of the necessity of collecting a copy of Customs Form 214–A. Normally, collection of this form is very important to Census because it ensures that statistical information is collected on each and every shipment to a zone. Direct transmittal of statistics is permitted by Census only when it is satisfied through other means that each and every shipment will be covered by the direct transmittal.

Census has indicated that trade statistics need not be collected for domestic status merchandise admitted to a zone. Therefore, the criteria in proposed § 146.13(b)(1) is not needed. Also, Customs will not, except as ordered by the Commissioner, require a prior permit for the admission of domestic status merchandise to a zone.

Under proposed § 146.13(b), direct transmittal of statistical information to Census is necessary to qualify a zone importer for direct

delivery of merchandise to a zone without a prior permit to admit merchandise. Section 146.40 requires importers to submit Customs Form 214 for merchandise recorded into the zone inventory and recordkeeping system the previous business day. The previous business day may not occur until several weeks after the merchandise is physically received in the zone. Census is concerned that statistical information on zone importations may not be reported timely.

To alleviate Census concern, yet reduce barriers to use of the direct delivery procedures by importers under § 146.40, Customs has decided to allow two alternatives to meeting Census statistical reporting requirements. The zone importer must either have a direct transmittal arrangement with Census or he must submit an individual Customs Form 214 and 241–A under § 146.40(c)(2) for each shipment, within 10 days after the end of the month in which the merchandise is physically received in the zone. No extension will be authorized to this statistical reporting requirement. The statistics for each shipment of merchandise to the U.S., including nationality of the shipping vessel or aircraft, date of exportation, and date of importation, must be reported separately.

These requirements are being incorporated into § 146.40 inasmuch as § 146.13 is deleted, as discussed above.

Comment: Many commenters object to proposed regulations concerning Customs examination and documentation requirements before or upon admission to zones. Specifically, the objections are that the examination required by the proposed regulations (1) is contrary to the Act; (2) would unreasonably delay the shipment of merchandise to zones; (3) reduces the advantages to using zones; and (4) would result in insufficient supervision for the proper enforcement of the foreign trade zone regulations. Commenters also state that examination should only be done in zones, that removal of Customs officers from zones would make it impossible to examine merchandise there, that commercial invoices are not usually available for presentation before or upon admission to a zone, further delaying shipments, and that merchandise admitted to a zone but destined only for exportation should not be examined by Customs.

Responses: We do not agree. Physical examination is a key principle of audit-inspection supervision because it enables Customs to determine the initial responsibility of the operator for the merchandise. Proper duty assessment and enforcement of admissibility requirements are also benefits of zone merchandise examination. The authority for such examinations is found in §§ 4, 8, and 15(b) of the Act (19 U.S.C. 81d, h, and o(b)), as well as in § 499 of the Tariff Act of 1930, as amended (19 U.S.C. 1499).

The purpose of providing a commercial invoice or similar documentation is to assist Customs in physical examination by disclosing the purported nature of the merchandise. It also aids in plan-

ning examinations under Customs selective examination procedures.

Furthermore, the proposed examination and documentation requirements do not unreasonably delay shipments to zones. First, under selective examination procedures, only about 20–30 percent of shipments are examined. Secondly, merchandise destined for zone sites under direct delivery procedures (§ 146.40) is examined even less frequently. Thirdly, if proper documentation is not available or is incomplete, the merchandise may be temporarily deposited in the zone, pending its receipt and Customs examination (§ 146.35).

Additionally, the examination and documentation requirements do not decrease the advantages of zones. First, there would not be unreasonable delays. Secondly, zone importers would not have to await the arrival of a Customs officer to physically supervise admission, as under the existing system. Thirdly, at worst the delays caused by examination and documentation requirements and those caused by awaiting the arrival of a Customs officer for physical supervision are equal. Zones will have very significant advantages conferred upon them under the Act.

As to the place of examination, we believe that this should be left to the discretion of the district director, so as to allow the most efficient deployment of personnel to carry out Customs tasks. In many cases, examination can be done more quickly at the dock, where Customs officers may be stationed full time, rather than at a zone with no full-time Customs officers.

The main purpose of audit-inspection supervision is to replace the physical supervision of zones. It does not deal directly with Customs staffing of zones for examination or documentation purposes. If the workload of a zone is large enough to warrant assignment of an officer full-time to examine merchandise and review documentation, the district director may do so. If the zone workload is light and commitments to other segments of the import community heavy, it would be inefficient and unreasonable to assign a full-time officer to a zone. There is nothing in the Act or elsewhere that obliges Customs, in its deployment of personnel, to accord zones more favorable treatment than other segments of the importing community.

Audit-inspection supervision will not result in ineffective enforcement of U.S. laws and regulations in zones. Under this system, Customs does not abandon supervision; rather, it supervises in a different manner, relying on physical supervision and recordkeeping by zone operators, enforced through liquidated damages, penalites, and suspension procedures. Customs believes these deterrents will provide better enforcement than physical supervison.

As to merchandise with no invoice or an incomplete invoice, we note that this merchandise may be sent to a zone for temporary deposit. Customs will accept alternate documentation in lieu of a

commercial invoice, providing the documentation provides a clear description of the nature of the merchandise. However, Customs experience has been that commercial invoices exist for most zone shipments.

Finally, with regard to merchandise destined only for exportation, this merchandise is subject to examination for identification purposes under audit-inspection supervision just as any other merchandises destined for zones.

Comment. Proposed § 146.73(d)(2) prohibits duty-paid merchandise from being futher processed in a zone. This provision is contrary to the Act and Customs Headquarters Ruling 215870. It therefore should be deleted.

Response: Whether or not the provision is contrary to Ruling 215870, the regulations take precedence. The prohibition against further processing of duty-paid merchandise is applicable only to merchandise previously in a zone, and not to all duty-paid merchandise.

The purpose of proposed § 146.73(d)(1) was to allow merchandise to remain in a zone after it had been constructively transferred to Customs territory and entered. It was intended to accommodate zone users who wished to make entry for a large amount of merchandise, but for various commercial reasons did not wish to immediately remove all or some of the merchandise from the zone. The prohibition on further processing was intended to avoid abuse of this privilege by an assortment of schemes designed to circumvent high duty rates or import restrictions. Examples of such schemes are as follows:

1. Merchandise is entered for consumption at a duty rate of 5 percent. After entry the merchandise is retained in the zone, or it is removed but shortly thereafter returned to the same or a different zone in domestic status. Then it is further manufactured into a product whose rate of duty is 25 percent. However, the merchandise is no longer subject to duty since it is now wholly in domestic status.

2. There is a quota on sugar products containing over 65 percent sucrose. The importer adds another product to the sugar in a zone to produce a product with less than 65 percent sucrose content, which is not subject to the quota. The importer files an entry on the product in the latter state, but the merchandise is retained in the zone in domestic status. Then the added product is sifted out, leaving a sugar product containing 90 percent sucrose. The merchandise is no longer subject to quota upon its ultimate removal from the zone because it is in domestic status.

3. A firm produces pharmaceutical products in a zone. During an intermediate stage of processing, the merchandise is in a condition subject to a free rate of duty, while the final rate of duty would be 15 percent. The intermediate stage is transitory, lasting no more than an hour. During this period, the firm files an entry at the free

rate of duty. The intermediate stage merchandise is left in the zone for continuous processing, or is piped in a loop that runs into Customs territory and immediately back into the zone, whereupon the firm requests readmission in domestic status. By the time Customs accepts the entry and has an opportunity to examine the merchandise, it is no longer in its condition as entered. Besides circumventing the higher rate of duty, the merchandise covered by the entry can no longer be examined for verification or appraisement purposes.

Entry for consumption in these cases is a sham. Merchandise which is entered but not commingled with U.S. commerce is not, in Customs opinion, entered for consumption, and such entries may be declared null and void and cancelled by the district director. We note that there is a line of court decisions in support of the view that entered for consumption means that the merchandise has entered U.S. commerce as an integral part thereof. See *U.S.* v. *Rolls Royce of America, Inc.,* T.D. 41202 and *U.S.* v. *Mussman and Schafer,* C.A.D. 506, C.D. 1367.

Section 3 of the Act permits zones two choices in the rate of duty upon entry for consumption—the rate of duty on the merchandise in its condition when the choice is made, or the rate of duty on the merchandise in its condition when transferred to Customs territory. A sham consumption entry allows a third choice—the rate applicable to the merchandise in an intermediate stage of processing in the zone.

In lieu of a prohibition on further processing, proposed § 146.73(d)(1) (now § 146.71(d)(1)) is being amended to authorize district directors to reject or cancel consumption entries from zones when the merchandise is not timely removed from the zone after entry, and merchandise removed from the zone does not enter U.S. commerce and is subsequently readmitted to a zone in domestic status. If the merchandise is so readmitted and the entry cancelled, it will be restored to its last zone status and a new entry required upon its transfer to Customs territory. This amendment closes an existing loophole so as to protect the revenue and properly enforce U.S. import laws and regulations.

A determination as to whether merchandise has not entered the commerce will be made by district directors on a case by case basis, considering factors such as the following:

1. Length of time the merchandise was outside the zone before readmission.
2. Whether readmission was requested by the importer of record or his agent, or a person acting in collusion with the importer of record.
3. Credible evidence that there was an intent by the importer or others, at the time of entry, to seek readmission to the zone.

4. The merchandise evades a higher rate of duty or an import restriction because of its having been admitted in domestic status.

5. The merchandise was not used or was not the subject of a bona fide sale by the importer after entry.

6. The merchandise was not further processed or manufactured outside the zone, or such processing or manufacture was minimal or cosmetic in nature.

Entries of merchandise readmitted in zone-restricted status will not be cancelled under this provision. It is noted that the position set forth in § 146.71(d)(1) is consistent with those in §§ 146.61, 146.63(c)(1) and 146.71(d)(2) in that merchandise which was entered but never removed from the zone is treated as constructively transferred back to the zone in its previous zone status.

An exception is made in § 146.71(c) from the general requirement of prompt zone removal for articles for use in a zone, such as production equipment, construction materials, and articles to be consumed in a zone.

A new § 146.71(d)(3) is added to clarify that merchandise which is actually entered into commerce may be readmitted to a zone in domestic status.

Comment: Several commenters were concerned that under the revised regulations, Customs would no longer approve a zone's procedures manual.

Response: Currently, Customs has three methods of supervising zones: (1) Customs maintained zone inventory ledgers; (2) Alternative Inventory Control Systems (AICS) maintained by the zone operator; and (3) the Audit-Inspection Program where the zone operator maintains his inventory control. Only under AICS has Customs approved a zone operator's inventory control system. The reason for Customs allowing the AICS method of operating a zone stems from the fact that Customs did not have regulatory guidelines available for use by zone operators. However, there were some problems with the AICS method due to Customs limited ability to assist in the design of sophisticated data processing systems within short time frames so as to allow zones to be activated. Also, several zone systems were approved where zone operations were delayed sometimes for several years, resulting in the original system either being rendered obsolete or in need of major changes at the time the zone was activated.

Accordingly, Customs decided to provide much needed inventory control guidelines in the regulations and allow the individual zones to adopt their own inventory systems within the guidelines devised by Customs. Questions as to whether particular elements of a proposed inventory control and recordkeeping system meet the criteria in revised Subpart B, Part 146, Customs Regulations, may be referred to the district director for a non-binding ruling, or to Customs Headquarters for a ruling in accordance with Part 177, Cus-

toms Regulations (19 CFR Part 177). Customs will not review any system in its entirety to render an opinion as to whether it meets all of the criteria in Subpart B.

Comment: Since the Government's expense in providing Customs officers at the zone is reimbursed by the zone itself, there is no logical reason why Customs personnel cannot be permanently stationed at the zone.

Response: Although the expense of maintaining a Cusoms officer at a zone is a consideration in our decision to implement audit-inspection supervision, there are other considerations of equal value. One is that audit-inspection supervision would provide protection to the revenue, which is equal to or greater than that under the existing systems. This was apparent from a 4-year study of warehouses which had converted to audit-inspection supervision. Another consideration is that the new system allows Customs to assign personnel to other areas which have a higher priority. A great many zone operators, grantees and users do not realize that Customs warehouse and zone officer positions, although they are fully reimburseable, are counted against Customs overall personnel ceiling. If officers are assigned to warehouses and zones, there will be fewer officers for assignment to higher priority tasks.

Comment: The proposed regulations do not reduce recordkeeping and information costs to operators.

Response: We disagree. To meet present document filing requirements, zone operators must gather, maintain, and compile certain data on their zones's admissions and removals and file required documents with Customs. Under the proposal, data gathering and maintenance needs will not change appreciably, but required document filings will be reduced dramatically. We estimate 50,000–70,000 annual form filings will be eliminated by the proposal, resulting in operator data handling and form filing cost reductions of from $600,000 to $700,000. We regard document cost reductions of an average $10,000 per year per activated zone site to be real and significant.

Comment: Since Customs no longer will be approving operator procedures manuals in their entirety, it is not fulfilling its obligations to assist the importing and exporting public. Customs should therefore provide some instruction to zone operators.

Response: We agree. Accordingly, Customs will provide the following assistance to the importing and exporting public:

1. Every attempt has been made to make the new regulations clear and concise.
2. Rewrite the Customs pamphlet on foreign trade zones.
3. Develop a booklet on foreign trade zones for operators and users.
4. Provide informational seminars for the public on the new regulations.

5. Rewrite operational guidelines based upon the new regulations.

6. Provide materials and seminars for Customs personnel, as well as the public.

Comment: Because of its impact, the proposal qualifies as a major rule under E.O. 12291 and thus requires a regulatory analysis.

Response: We disagree. Section 1(b) of E.O. 12291 requires a regulatory impact analysis for a proposal when one or more of the following criteria are met:

(1) A net national economic cost of $100 million or more;

(2) Significant cost increases for consumers; and

(3) Adverse effect upon the international competitiveness of U.S. firms.

In conducting an initial regulatory analysis under the terms of the Regulatory Flexibility Act (5 U.S.C. 603, 604), we concluded that none of the criteria was met.

Comment: Many commenters object to the panalty and liquidated damages provisions of the proposed regulations as excessive, unwarranted and not comparable to the bonded warehouse liquidated damages provisions or the penalties for fraud under § 592, Tariff Act of 1930, as amended (19 U.S.C. 1592). They also question the authority of district directors to suspend a zone's activated status, claiming that this action amounts to revocation of the zone grant.

Response: As to the liquidated damages and penalties provisions of the new regulations not being comparable to those for bonded warehouse, we note that there are considerable differences between zones and bonded warehouses. Merchandise in a bonded warehouses is in Customs territory, has been entered, and is secured by both the warehouse proprietor's bond and the warehouse entry bond, whereas merchandise in a zone is not in Customs territory, is not entered and is not generally subject to the Customs laws or the bonding requirements. Also, there is much greater freedom to manufacture and manipulate merchandise in a zone than in a bonded warehouse. In view of this relative freedom from Customs control of activities in zones as compared to warehouses, the bonding requirements proposed are minimal.

As to the comment that the liquidated damages provisions under the new regulations should be consistent with those for bonded warehouses, we note that the proposed liquidated damages provisions for restricted merchandise or alcoholic beverages are consistent with those for such articles under the importor's and warehouse proprieter's bonds. They are in a higher amount than liquidated damages for other merchandise. This is necessary to remove the economic incentive to breach the bond, in certain cases, in order to evade quota, licensing, labeling or other restrictions.

With respect to liquidated damages claims not relating to merchandise, the liquidated damages proposed were in an amount to be determined by the district director, but not more than $200. Sev-

eral commenters, however, were of the opinion that liquidated damages for non-merchandise related defaults of the zone operator's bond should be consistent with those for default of the warehouse proprietor's bond. Customs agrees with this position. Therefore, proposed § 146.81 is deleted, and the zone operator's bond in § 113.73, Customs Regulations (19 CFR 113.73), is modified to include the provisions previously appearing in § 146.81. Liquidated damages for merchandise and non-merchandise related defaults of the zone operator's bond will conform to these applicable to the warehouse proprietor's bond as well as other Customs bonds.

The only *penalty* provision in the new regulations is a restatement of 19 U.S.C 81s (§ 19, the Act), which authorizes a fine of not more than $1,000 for violation of the Act or any regulations thereunder. The regulations in Part 146, Customs Regulations, are regulations under the Act. The penalty for fraud under 19 U.S.C. 1592 is the domestic value of the merchandise plus any duties. These two penalty provisions are concerned with preventing two different types of activity which bear no relationship to each other. The penalties can in no way be compared to each other.

With respect to Customs authority to suspend activation of a zone, in proposed § 146.83, we note that §§ 3, 5, 8 and 15(b) of the Act (19 U.S.C. 81c, e, h, o(b)), confer authority upon the Secretary of the Treasury to make rules and regulations under the Act. Customs derives this authority from the Secretary.

Suspension of activation of a zone is not a revocation of the zone grant, which is the only remedy currently available to Customs for improper activity or continued violations of the foreign trade zones regulations, provided that the Board orders the revocation. Furthermore, under § 18 of the Act (19 U.S.C. 81r), the zone grant cannot be revoked without giving four months notice and taking other actions.

Suspension gives Customs an alternative method for dealing with improper activity in a zone. It allows Customs to single out the improper activity, subzone, or zone site involved and apply certain sanctions, without disturbing other proper zone activities. For example, suspension may be limited to the activities of a particular site, such as suspension of the privilege to admit merchandise for a particular activity, and it may not necessarily be directed at the activation of the zone as a whole. Proposed §§ 146.83 (a) and (b)(1) (now §§ 146.82 (a) and (b)(1)) have been modified to clarify this procedure.

Some commenters also object to the proposed regulations on suspension on the grounds that they recognize only the operator as a party to suspension proceedings. These commenters suggest that grantees and users also be made parties to suspension proceedings. Customs agrees with this suggestion with respect to grantees, and, accordingly, we have added new paragraph (4) to § 146.83(b) to recognize the grantee. However, we do not agree that a user should be

a party. Approval of zone activation is given to a grantee or operator, not to users. Suspension, or partial suspension, of that approval is a matter between Customs and the grantee or operator who is responsible for the zone.

Finally, it is noted that suspensions are for a limited period, are designed for fast action to minimize developing problems, and are substantially less onerous than revocation provisions applicable to customs brokers, warehouses proprietors, container station operators, and cartmen.

Comment: Language is not used consistently and accurately throughout the proposal. In describing the process of merchandise flow through a zone, the following words are used: admit, brought, enter, receive, remove, transfer, deliver, and withdraw. Also the terms zone, zone site, noncontiguous zone site, zone user, zone firm and zone seller are used with different intents but without definition.

Response: Customs does not agree with this comment. Nevertheless, it appears that some commenters do not understand, or misunderstand, the use of a number of terms. Accordingly, it has been decided to revise and expand the definitions section and, through editorial changes throughout the proposed regulations, improve clarity. "Secretary", "Board", "State," "Corporation", "Public Corporation", "Private Corporation", "Applicant", "Grantee", and "Zone", are defined in § 1 of the Act (19 U.S.C. 81a), and wherever those terms appear in Part 146, they are used in consonance with their statutory meaning, unless otherwise stated. The statutory definitions will not be repeated in the new regulations.

Definitions of several terms, i.e., "subzone", "operator", and "user" have appeared in the proposed regulations of the Board published on February 18, 1983, in the Federal Register (48 FR 7189). As it is not known when those proposed regulations may become final, and as the use of these words is necessary in these regulations, their definitions have been added to § 146.1. If it appears necessary, the definitions may be modified when the proposed regulations of the Board become final.

The terms "zone site" and "noncontiguous zone site" result from particular grants of authority by the Board to establish and operate a zone. It is believed that grantees and operators of those sites are aware of their meanings. The term "noncontiguous zone" has been deleted from these regulations wherever it appears. A definition of "zone site" has been added.

The exclusion of production equipment, building materials, and supplies from the definition of "merchandise" in § 146.1(h) is consistent with Customs decision on this subject. Production equipment, building materials, and supplies are not "merchandise" within the meaning of § 3 of the Act (19 U.S.C. 81c) for the reasons set forth in Customs Service Decision (C.S.D.) 79–418. Also, in H.R. 98–267 on H.R. 3398 (Trade and Tariff Act of 1984, June 24, 1983),

at page 36, it is stated that the Act does not apply to machinery and equipment. They are, therefore, dutiable upon entry.

This position is supported by 19 U.S.C. 1311, the statute establishing bonded manufacturing warehouses, which specifically prohibits the duty-free entry of imported implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein. It would be inconsistent for Customs to prohibit the duty-free entry of such articles into a manufacturing warehouse, from which manufactured goods must be exported, and to permit the duty-free entry of the same articles into a zone. If zones had no such limitation, they would have a distinct advantage over domestic manufacturers since domestic manufacturers are required to enter and pay duty on those articles.

Review does not reveal differing intents in the use of "zone user", "zone firm", and "zone seller" and their meaning is self-evident in context. However, a definition of "user" has been added to § 146.1, and an effort has been made to remove the terms or to further clarify their meaning by editorial changes.

"Enter", where used, refers to the entry of merchandise into the Customs territory of the United States. "Withdrawal" refers to withdrawal from warehouses. Both words are used in the ordinary tariff sense.

To minimize confusion, and since goods are neither entered into nor withdrawn from a zone in the tariff sense, the words "admit", for bringing goods into a zone in zone status, and "transfer", for taking goods out of a zone, have been used. Definitions of these words have been added. "Brought", "receive", "remove", and "deliver", wherever used, have their ordinary meaning. While inconsistent and inaccurate use of the terms in the proposed regulations is not evident, their use has been reviewed and editorial changes have been made wherever appropriate.

Comment: Several commenters objected to the procedures for appealing decisions of the district director denying applications to activate a zone or suspending the activated status of a zone, but these comments were not specific.

Response: We see no problem with the appeal procedure for suspensions of the activated status of a zone or of certain activities in a zone. The procedures include the right to request a hearing and to obtain the decision of the regional commissioner.

With respect to denial of an application to activate a zone or zone site, the decision of the district director is considered the final adminstrative decision for several reasons. First, there may not even be an appealable right. The grant to establish and operate a zone is conditioned upon the grantee's obtaining all necessary permits and licenses, and securing the permission of the district director to begin operations in the zone. Where the district director denies activation because the conditions have not been complied

with, or for other stated reasons, denial of activation does not result in denial of an appealable right since the right to activate the zone has not been granted.

Secondly, the district director is more closely connected with the application for and activation of a zone than Customs regional or headquarters officials. Appeals of denials to the Customs region or to Headquarters would result in little more than delay and inquiries into the factual basis of the decision. We believe that the Board and the courts provide the most suitable forum for appeals from denials of activation on the part of the district director.

Comment: The annual fees proposed for zones are unreasonably high.

Response: We disagree. The purpose of the annual fee is to recover Customs costs incurred in carrying out the audit-inspection supervision program. The annual fee to be charged each zone is a function of the degree of complexity in Customs auditing and inspection of zones.

Under the present inspectional system, Customs bills zone operators approximately $1.3 million annually for inspectional services. Zone operators recover this expense in their fee and rental/lease billings to zone users. We estimate that the Customs component of these fees paid by zone users averages $870 per year per user.

Under the proposed audit-inspection system with different fee tiers, Customs billings to operators of general purpose zones will amount to approximately $1 million per year, versus the estimated $1.3 million at present. The Customs component of small business users' payment to operators will average $670 per year per user, versus the $870 per year per user at present. Future increases in the annual fee will reflect cost increases incurred by Customs in delivering audit and inspection services. These increases will consist largely of annual rises in labor costs. It is expected that labor costs, and thus annual fees charged zone operators, will rise by a moderate 2–4 percent each year.

The proposed fees, therefore, are not unreasonable. Moreover, the proposed annual fee has been restructured into a three-tiered system with the larger, more active zones set to pay higher fees than the smaller zones. This would provide equitable treatment for the smaller zones in that they would no longer subsidize the larger zones. Appendix B reflects the revised structure of the annual fee.

Comment: Many commenters requested clarification of the respective liabilities to Customs of grantees, operators, and users of zones.

Response: As the privilege of establishing, operating, and maintaining a zone is given to a grantee, Customs is of the opinion that all liabilities to Customs involving zone activities reside ultimately with the grantee of the zone. If the operator is not the grantee, these liabilities can be minimized by the operator's being named as principal on the zone operator's bond. There is no liability to Cus-

toms on the part of zone users, other than users that are also operators. It is the grantee or the grantee and operator who have responsibilities to Customs with the attendant liabilities. Grantees are free to make whatever contractual agreements regarding indemnification with operators and users that they choose. Furthermore, Customs is not aware of any way that a grantee can divest itself of all liability, or limit its liability, in the event of loss or damage to Customs resulting from zone activities. While 19 U.S.C. 1623(c) and § 113.51, Customs Regulations (19 CFR 113.51), authorize the cancellation of bonds or bond charges under certain circumstances, that authority does not apply to prospective transactions nor does it extend to the waiver of any lawful claims against the grantee, not secured by bond, that arise from zone activities.

Comment: A few comments were received concerning Subpart D, Part 146. The commenters stated that many of the sections and subsections of Subpart D were definitional in nature and should be in Subpart A.

Response: The subject matter of Subpart D—the status of merchandise in a zone is of sufficient importance to merit its own subpart. The terms "privileged foreign merchandise," "nonprivileged foreign merchandise," "domestic merchandise," and "zone-restricted merchandise" do not appear in the Act. They were coined to describe the status of certain merchandise in a zone with reference to particular provisos of § 3 of the Act (19 U.S.C. 81c). In that sense, the terms are not definitional but descriptive, in that they simply provide a name for conditions prescribed by law, *e.g.*, "zone-restricted" describes the status of merchandise subject to the fourth proviso of 19 U.S.C. 81c.

One commenter urged that § 146.44 (zone-restricted merchandise) be expanded to include a requirement that merchandise placed in a zone to obtain payment of drawback and subsequently removed for shipment to an insular possession of the U.S. be reported by the zone operator to the district director. Upon consideration, it has been decided not to add that requirement to Part 146. Section 191.13, Customs Regulations (19 CFR 191.13), provides that there is no authority to allow drawback on articles shipped to insular possessions. There is authority to allow drawback on articles placed in a zone in zone-restricted status. Subsequent shipment of such articles to an insular possession would be contrary to the Act since it would not be an exportation, destruction, or storage. The likelihood of such shipments is remote and since § 191.13 essentially covers the situation, there is no need to make allowance for it in § 146.44.

In connection with the deletion of § 146.14, § 146.43 is amended to specify that no permit will be required for the admission, handling, or transfer to Customs territory of domestic status merchandise except (1) when mixed or combined with merchandise of another zone status, and (2) when so ordered by the Commissioner in individual circumstances. The latter residual authority is retained

to allow Customs to properly control domestic status merchandise in unusual circumstances. The operator must still maintain proper records of domestic status merchandise under Subpart B, Part 146, even if no permit is required.

Finally, a new § 146.14 has been added. This section is a restatement of the statutory limitation on retail trade in a zone, found in § 15(d) of the Act (19 U.S.C. 81o(d)).

Changes are made throughout the regulations to conform them to the changes made by this document. Also, as a general point, whenever the word "days" appears in this revision, it means calendar days, unless "working days" is specified.

After careful analysis of all the comments received and upon further review of the matter, it has been determined advisable to adopt the proposed regulatory amendments with the various modifications as set forth above.

Executive Order 12291

It has been determined that these amendments are not a "major rule" within the criteria provided in § 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604), are applicable to this document. An initial regulatory analysis was prepared and included in the NPRM as Appendix C. A final regulatory flexibility analysis is attached to this document as an appendix.

Paperwork Reduction Act

The collection of information requirements contained in § 146.25 and the recordkeeping requirement contained in § 146.4, are subject to the provisions of the Paperwork Reduction Act (44 U.S.C. 3504(h)) and have been cleared by the Office of Management and Budget (OMB). Accordingly, Part 178, Customs Regulations (19 CFR Part 178), which lists the information collections contained in the regulations and the control numbers assigned by OMB, is being amended to include OMB control number 1515–0151.

Drafting Information

The principal author of this document was Susan Terranova, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

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LIST OF SUBJECTS IN 19 CFR PARTS 146 AND 178

Customs duties and inspection, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

AMENDMENTS TO THE REGULATIONS

Chapter 1, Title 19, Code of Federal Regulations, is amended by revising Part 146 to read as follows:

PART 146—FOREIGN TRADE ZONES

Sec.

SUBPART C—ADMISSION OF MERCHANDISE TO A ZONE

SUBPART D—STATUS OF MERCHANDISE IN A ZONE

SUBPART E—HANDLING OF MERCHANDISE IN A ZONE

SUBPART F—TRANSFER OF MERCHANDISE FROM A ZONE

SUBPART G—PENALTIES; SUSPENSION; REVOCATION

AUTHORITY: 19 U.S.C. 66, 81a–81u, 1202 (Gen. Hdnote 11), 1623, 1624, § 146.5 also issued under 31 U.S.C. 9701.

SOURCE: T.D. 86–16 unless otherwise noted.

§ 146.0 Scope.

Foreign trade zones are established under the Foreign Trade Zones Act and the general regulations and rules of procedure of the Foreign Trade Zones Board contained in 15 CFR Part 400. This Part 146 of the Customs Regulations governs the admission of merchandise into a foreign trade zone, manipulation, manufacture, or exhibition in a zone; exportation of the merchandise from a zone; and transfer of merchandise from a zone into Customs territory.

SUBPART A—GENERAL PROVISIONS

§ 146.1 Definitions.

(a) The following words, defined in § 1 of the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a), are given the same meaning when used in this part, unless otherwise stated: "Board", "Grantee", and "Zones".

(b) The following are general definitions for the purpose of this part:

(1) *Act.* "Act" means the Foreign-Trade Zones Act of June 18, 1934, as amended (48 Stat. 998–1003; 19 U.S.C. 81a–u).

(2) *Activation.* "Activation" means approval by the grantee and district director for operations and for the admission and handling of merchandise in zone status.

(3) *Admit.* "Admit" means to bring merchandise into a zone with zone status.

(4) *Alteration.* "Alteration" means a change in the boundaries of an activated zone or subzone; activation of a separate site of an already-activated zone or subzone with the same operator at the same port; or the relocation of an already-activated site with the same operator.

(5) *Customs territory.* "Customs territory" is the territory of the U.S. in which the general tariff laws of the U.S. apply. "Customs territory of the United States" includes only the States, the District of Columbia, and Puerto Rico. (General Headnote 2, Tariff Schedules of the United States (19 U.S.C. 1202)).

(6) *Constructive transfer.* "Constructive transfer" is a legal fiction which permits acceptance of a Customs entry for merchandise in a zone before its physical transfer to the Customs territory.

(7) *Deactivation.* "Deactivation" means voluntary discontinuation of the activation of an entire zone or subzone by the grantee or operator. Discontinuance of the activated status of only a part of a zone site is an alteration.

(8) *Default.* "Default" means an action or omission that will result in a claim for duties, taxes, charges, or liquidated damages under the Foregn Trade Zone Operator Bond.

(9) *Merchandise.* "Merchandise" includes goods, wares and chattels of every description, except prohibited merchandise. Building materials, production equipment, and supplies for use in operation of a zone are not "merchandise" for the purpose of this part.

(10) *Domestic merchandise.* "Domestic merchandise" is merchandise which has been (1) produced in the U.S. and not exported therefrom, or (2) previously imported into Customs territory and properly released from Customs custody.

(11) *Foreign merchandise.* "Foreign merchandise" is imported merchandise which has not been properly released from Customs custody in Customs territory.

(12) *Conditionally admissible merchandise.* "Conditionally admissible merchandise" is merchandise which may be imported into the U.S. under certain conditions. Merchandise which is subject to permits or licenses, or which may be reconditioned to bring it into compliance with the laws administered by various Federal agencies, is an example of conditionally admissible merchandise.

(13) *Prohibited merchandise.* "Prohibited merchandise" is merchandise the importation of which is prohibited by law on grounds of public policy or morals, or any merchandise which is excluded from a zone by order of the Board. Books urging treason or insurrection against the U.S., obscene pictures, and lottery tickets are examples of prohibited merchandise.

(14) *Fungible merchandise.* "Fungible merchandise" means merchandise which for commercial purposes is identical and interchangeable in all situations.

(15) *Operator.* "Operator" is a corporation, partnership, or person that operates a zone or subzone under the terms of an agreement with the zone grantee. Where used in this part the term "operator" also applies to a "grantee" that operates its own zone.

(16) *Reactivation.* "Reactivation" means a resumption of the activated status of an entire area that was previously deactivated without any change in the operator or the area boundaries. If the boundaries are different, the action is an alteration. If the operator is different, it is an activation.

(17) *Subzone.* "Subzone" is a special-purpose zone established as part of a zone project for a limited purpose, that cannot be accommodated within an existing zone. The term "zone" also applies to a subzone, unless specified otherwise.

(18) *Transfer.* "Transfer" means to take merchandise with zone status from a zone for consumption, transportation, exportation, warehousing, cartage or lighterage, vessel supplies and equipment, admission to another zone, and like purposes.

(19) *Unique identifier.* "Unique identifier" means the numbers, letters, or combination of numbers and letters that identify merchandise admitted to a zone with zone status.

(20) *User.* "User" means a person or firm using a zone or subzone for storage, handling, or processing of merchandise.

(21) *Zone lot.* "Zone lot" means a collection of merchandise maintained under an inventory control method based on specific identification of merchandise admitted to a zone by lot.

(22) *Zone site.* "Zone site" means the physical location of a zone or subzone.

(23) *Zone status.* "Zone status" means the status of merchandise admitted to a zone, i.e., nonprivileged foreign, privileged foreign, zone restricted, or domestic.

§ 146.2 District director as Board representative.

The district director in whose district the zone is located shall be in charge of the zone as the representative of the Board.

§ 146.3 Customs supervision.

(a) *Assignment of Customs officers.* Customs officers will be assigned or detailed to a zone as necessary to maintain appropriate Customs supervision of merchandise and records pertaining thereto in the zone, and to protect the revenue.

(b) *Supervision.* Customs supervision over any zone or transaction provided for in this part will be in accordance with § 161.1 of this chapter. The district director may direct a Customs officer to Supervise any transaction or procedure at a zone. Supervision may be performed through a periodic audit of the operator's records, guantity count of goods in a zone inventory, spot check of selected transactions or procedures, or review of recordkeeping, security, or conditions of storage in a zone.

§ 146.4 Operator responsibility and supervision.

(a) *Supervision.* The operator shall supervise all admissions, transfers, removals, recordkeeping, manipulations, manufacturing, destruction, exhibition, physical and procedural security, and conditions of storage in the zone as required by law and regulations. Supervision by the operator shall be that which a prudent manager of a storage, manipulation, or manufacturing facility would be expected to exercise, and may take into account the degree of supervision exercised by the zone user having physical possession of zone merchandise.

(b) *Customs access.* The operator shall permit any Customs officer access to a zone.

(c) *Safekeeping of merchandise and records.* The operator responsible for safekeeping of merchandise and records concerning merchandise admitted to a zone. The operator, at its liability, may allow the zone importer or owner of the goods to store, safeguard, and otherwise maintain or handle the goods and the inventory records pertaining to them.

(d) *Records maintenance.* The operator shall (i) maintain the inventory control and recordkeeping system in accordance with the provisions of Subpart B, (ii) retain all records required in this Part and defined In § 162.1(a) of this chapter, pertaining to zone merchandise for 5 years after the merchandise is removed from the zone, and (iii) protect proprietary information in its custody from unauthorized disclosure. Records shall be readily available for Customs review at the zone.

(e) *Merchandise security.* The operator shall maintain the zone and establish procedures adequate to ensure the security of merchandise located in the zone in accordance with applicable Customs security standards and specifications.

(f) *Storage and handling.* The operator shall store and handle merchandise in a zone in a safe and sanitary manner to minimize damage to the merchandise, avoid hazard to persons, and meet local, state, and Federal requirements applicable to a specific kind of goods. All trash and waste will be promptly removed from a zone. Aisles will be established and maintained, and doors and entrances left unblocked for access by Customs officers and other persons in the performance of their official duties.

(g) *Guard service.* The operator is authorized to provide guards or contract for guard service to safeguard the merchandise and ensure the security of the zone. This authorization does not limit the authority of the district director to assign Customs guards to protect the revenue under section 4 of the Act (19 U.S.C. 81d).

(h) *Miscellaneous responsibilities.* The operator is responsible for complying with requirements for admission, manipulation, manufacture, exhibition, or destruction, shortage, or overage; inventory control and recordkeeping systems, transfer to Customs territory, and other requirements as specified in this part.

§ 146.5 Activation fee and annual fee.

The operator, or where there is no operator, the grantee, will be charged a nonrefundable fee to activate a zone or any portion of a zone, or to alter or relocate an activated portion of a zone, under the provisions of 31 U.S.C. 9701. The operator of an activated zone will be charged a nonrefundable annual fee for each activated zone as payment of the cost of the additional Customs service required under the Act as provided in 19 U.S.C. 81n and the regulations in this part. The operator or grantee shall pay the annual fee to the district director of the district in which the zone is located within 14 days after activation and within 14 days after the effective date of the published fee schedule for each year thereafter that the area remains activated. The fee schedule will be revised annually and published in the Federal Register and the CUSTOMS BULLETIN.

§ 146.6 Procedure for activation.

(a) *Application.* A zone operator, or where there is no operator, a grantee, shall make written application to the district director of the district in which the zone is located to obtain approval of activation of a zone or zone site. The area to be activated may be all or any portion of the zone approved by the Board. The application must include a description of all the zone sites covered by the application, any operation to be conducted therein, and a statement of the general character of the merchandise to be admitted.

(b) *Supporting documents.* The appliclation must be accompanied by the following:

(1) The application fee required by § 146.5;

(2) A blueprint of the area approved by the Board to be activated showing area measurements, including all openings and buildings; and all outlets, inlets, and pipelines to any tank for the storage of liquid or similar product, that portion of the blueprint certified to be correct by the operator of the tank;

(3) A gauge table, when appropriate, showing the capacity, in the appropriate unit, of any tank, certified to be correct by the operator of the tank;

(4) A procedures manual describing the Inventory control and recordkeeping system that will be used in the zone, certified by the operator or grantee to meet the requirements of Subpart B; and

(5) The written concurrence of the grantee, when the operator applies for activation, in the requested zone activation.

(c) *Inquiry by district director.* As a condition of approval of the application, the district director may order an inquiry by a Customs officer into:

(1) The qualifications, character, and experience of an operator and/or grantee and their principal officers; and

(2) The security, suitability, and fitness of the facility to receive merchandise in a zone status.

(d) *Decision of the district director.* The district director shall promptly notify the applicant in writing of his decision to approve or deny the application to activate the zone. If the application is denied, the notification will state the grounds for denial which need not be limited to those listed in § 146.82. The decision of the district director will be the final Customs administrative determination in the matter. On approval of the application, a Foreign Trade Zone Operator's Bond shall be executed on Customs Form 301, containing the bond conditions of § 113.73 of this chapter.

(e) *Activation.* Upon the district director's approval of the application and acceptance of the executed bond, the zone or zone site will be considered activated; and merchandise may be admitted to the zone. Execution of the bond by an operator does not lessen the liability of the grantee to comply with the Act and implementing regulations.

§ 146.7 Zone changes.

(a) *Alteration of an activated area.* An operator shall make written application to the district director for approval of an alteration of an activated area, including an alteration resulting from a zone boundary modification. The application must be accompanied by the fee required in § 146.5 and the supporting document requirements specified in § 146.6, as applicable. The district director may review the security, suitability, and fitness of the area, and shall reply to the applicant as provided for in § 146.6.

(b) *Deactivation or reactivation.* A grantee, or an operator with the concurrence of a grantee, shall make written application to the district director for deactivation of a zone site, indicating by layout

or blueprint the exact site to be deactivated. The district director shall not approve the application unless all merchandise in the site in zone status (other than domestic status) has been removed at the risk and expense of the operator. The district director may require an accounting of all merchandise in a zone as a condition of approving the deactivation. A zone may be reactivated using the above procedure if a sufficient bond is on file under § 146.6(d). No fee is required for deactivation or reactivation.

(c) *Suspenson of activated site.* When approval of an activated status has been suspended through the procedure in Subpart G, the district director may require all goods in that area in zone status (other than domestic status) to be transferred to another zone, a bonded warehouse, or other location where they may lawfully be stored, if the district director considers that transfer advisable to protect the revenue or administer any Federal law or regulation.

(d) *New bond.* The district director may require an operator to furnish, on 10 days notice, a new Foreign Trade Zone Operator's Bond on Customs Form 301. If the operator fails to furnish the new bond, no more merchandise will be received in the zone in zone status. Merchandise in zone status (other than domestic status) will be removed at the risk and expense of the operator. A new bond may be required if (i) the activated zone area is substantially altered; (ii) the character of merchandise admitted to the zone or operations performed in the zone are substantially changed; (iii) the existing bond lacks good and sufficient surety; or (iv) for any other reason that substantially affects the liability of the operator under the bond. Although a new bond may not be required, the operator shall obtain the consent of the surety to any material alteration in the boundaries of the zone.

(e) *New operator.* A grantee of an activated zone site shall make written application to the district director for approval of a new operator, submitting with the application a certification by the new operator that the inventory control and recordkeeping system meets the requirements of Subpart B, and a copy of the system procedures manual if different from the previous operator's manual. The district director may order an inquiry into the qualifications, character, and experience of the operator and its principal officers.

(f) The bond in § 146.6 shall be submitted by the operator before the operating agreement may become effective in respect to merchandise in zone status. The district director shall promptly notify the grantee, in writing, of the approval or disapproval of the application.

(g) *List of officers, employees, and other persons.* The district director may make a written demand upon the operator to submit, within 30 days after the date of the demand, a written list of the names, addresses, social security numbers, and dates and places of birth of officers and persons having a direct or indirect financial interest in the operator, and of persons employed in the carriage,

receipt or delivery of merchandise in zone status, whether employed by the zone operator or a zone user. If a list was previously furnished, the district director may make a written demand for the same informaton in respect to new persons employed in the carriage, receipt, or delivery of zone status merchandise within 10 days after such employment. The list need not include employees of common or contract carriers transporting goods to or from the zone.

§ 146.8 Seals, authority of operator to break and affix.

The district director may authorize an operator to break a Customs in-bond seal affixed under § 18.4 of this chapter, or under any Customs order or directive, on any vehicle or intermodal container containing merchandise approved for admission to the zone upon its arrival at the zone; or to affix a Customs in-bond seal to any vehicle or intermodal container of merchandise for which an entry, withdrawal, or other approval document has been obtained for movement in-bond from the zone. The authorized affixing or breaking of that seal will be considered to have been done under Customs supervision. The operator shall report to the district director, upon arrival of the vehicle or container at the zone, any seal found to be broken, missing, or improperly affixed, and hold the vehicle or container and its contents intact pending instructions from the district director. If the operator does not obtain the written concurrence of the carrier as to the condition of the seal or delivering conveyance, the district director shall deem the seal or delivering conveyance to be intact.

§ 146.9 Permission of operator.

An application for permission to admit merchandise into a zone, or to manipulate, manufacture, exhibit, or destroy merchandise in a zone must include the written concurrence of the operator, except where the regulations of this part provide for the making of application by the operator itself or where the operator files a separate specific or blanket application. The written concurrence of the operator in the removal of merchandise from a zone is not required because the merchandise is released by the district director to the operator for delivery from the zone, as provided in § 146.71(a).

§ 146.10 Authority to examine merchandise.

The district director may cause any merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation, or instruction which Customs is authorized to enforce.

§ 146.11 Transportation of merchandise to a zone.

(a) *From outside Customs territory.* Merchandise may be admitted directly to a zone from any place outside Customs territory.

(b) *Through Customs territory, foreign merchandise.* Foreign merchandise destined to a zone and transported in-bond through Customs territory will be subject to the laws and regulations applicable to other merchandise transported in-bond between two places in Customs territory.

(c) *From Customs territory, domestic merchandise.* Domestic merchandise may be admitted to a zone from Customs territory by any means of transportation which will not interfere with the orderly conduct of business in the zone.

(d) *From a bonded warehouse.* Merchandise may be withdrawn from a bonded warehouse under the procedure in § 144.37(g) of this chapter and transferred to a zone for admission in zone restricted status.

§ 146.12 Use of zone by carrier.

(a) *Primary use; lading and unlading.* The water area docking facilities, and any lading and unlading stations of a zone are intended primarily for the unlading of merchandise into the zone or the lading of merchandise for removal from the zone. Their use for other purposes may be terminated by Customs if found to endanger the revenue, or by the Board if found to impede the primary use of the zone.

(b) *Carrier in zone not exempt from law or regulations.* Nothing in the Act or the regulations in this part shall be construed as excepting any carrier entering, remaining in, or leaving a zone from the application of any other law or regulation.

§ 146.13 Customs forms and procedures.

Where a Customs form or other document is required in this part, the number of copies of the form or document required to be presented and their manner of distribution and processing shall be determined by the district director, except as otherwise specified in this part.

§ 146.14 Retail trade within a zone.

Retail trade is prohibited within a zone except as provided in 19 U.S.C. 81o(d). See also the regulations of the Board as contained in 15 CFR Part 400.

SUBPART B—INVENTORY CONTROL AND RECORDKEEPING SYSTEM

§ 146.21 General requirements.

(a) *Systems capability.* The operator shall maintain either manual or automated inventory control and recordkeeping systems or combination manual and automated systems capable of:

(1) Accounting for all merchandise, including domestic status merchandise, temporarily deposited, admitted, granted a zone status and/or status change, stored, exhibited, manipulated, manufactured, destroyed, transferred, and/or removed from a zone;

(2) Producing accurate and timely reports and documents as required by this part;

(3) Identifying shortages and overages of merchandise in a zone in sufficient detail to determine the quantity, description, tariff classification, zone status, and value of the missing or excess merchandise;

(4) Providing all the information necessary to make entry for merchandise being transferred to the Customs territory;

(5) Providing an audit trail to Customs forms from admission through manipulation, manufacture, destruction or transfer of merchandise from a zone either by zone lot or Customs authorized inventory method.

(b) *Procedures manual.*

(1) The operator shall provide the district director with an English language copy of its written inventory control and recordkeeping systems procedures manual in accordance with the requirements of this part.

(2) The operator shall keep current its procedures manual and shall submit to the district director any change at the time of its implementation.

(3) The operator may authorize a zone user to maintain its individual inventory control and recordkeeping system and procedures manual. The operator shall furnish a copy of the zone user's procedures manual, including any subsequent changes, to the district director. However, the operator will remain responsible to Customs and liable under its bond for supervision, defects in, or failures of a system.

(4) The operator's procedures manual and subsequent changes will be furnished to the district director for information purposes only. Customs receipt of a manual does not indicate approval or rejection of a system.

(c) *Liability of operator.* Upon zone activation approval the operator remains liable for complying with all inventory control and recordkeeping system requirements set forth in this part.

§ 146.22 Admission of merchandise to a zone.

(a) *Identification.* All merchandise will be recorded in a receiving report or document using a zone lot number or unique identifier. All merchandise, except domestic status merchandise for which no permit for admission is required under § 146.43, will be traceable to a Customs Form 214 and accompanying documentation.

(b) *Reconciliation.* Quantities received will be reconciled to a receiving report or document such as an invoice with any discrepancy reported to the district director as provided in §146.37.

(c) *Incomplete documentation.* Merchandise received without complete Customs documentation or which is unacceptable to the inventory control and recordkeeping system will be recorded in a suspense account or record until documentation is complete or the system is capable of accepting the information, at which time it

will be formally admitted to the zone under § 146.32 or 146.40. The receiving report or document will provide sufficient information to identify the merchandise and distinguish it from other merchandise. The suspense account or record will be completely documented for Customs review to explain the differences noted and corrections made.

(d) *Recordation.* Merchandise received will be accurately recorded in the inventory system records from the receiving report or document using the zone lot number or unique identifier for traceability. The inventory record will state the quantity and date admitted, cost or value where applicable, zone status, and description of the merchandise, including any part or stock number.

§ 146.23 Accountability for merchandise in a zone.

(a) *Identification of merchandise.*

(1) *General.* A zone lot number or unique identifier will be used to identify and trace merchandise.

(2) *Fungible merchansise.* Fungible merchandise may be identified by an inventory method authorized by Customs, which is consistently applied, such as First-In-First-Out (FIFO) and using an unique identifier.

(b) *Inventory records.* The inventory records will specify by zone lot number or unique identifier:

(1) Location of merchandise;

(2) Zone status;

(3) Cost or value, unless operator's or user's financial records maintain cost or value and the records are made available for Customs review;

(4) Beginning balance, cumulative receipts and removals, adjustments, and current balance on hand by date and quantity;

(5) Destruction of merchandise; and

(6) Scrap, waste, and by-products.

(c) *Physical inventory.* The operator shall take at least an annual physical inventory of all merchandise in the zone (unless continuous cycle counts are taken as part of an ongoing inventory control program) with prior notification of the date(s) given to Customs for any supervision of the inventory deemed necessary. The operator shall notify the district director of any discrepancies in accordance with §146.53.

§ 146.24 Transfer of merchandise from a zone.

(a) *Accountability.*

(1) All zone status merchandise transferred from a zone will be accurately recorded within the inventory control and recordkeeping system.

(2) The inventory control and recordkeeping system for merchandise transfers must have the capability to trace all transfers back to a zone admission under a Customs authorized inventory method.

(b) *Information.* The inventory control and recordkeeping system must be capable of providing all information necessary to make entry for transfer of merchandise from the zone.

§ 146.25 Annual reconciliation.

(a) *Report.* The operator shall prepare a reconciliation report within 90 days after the end of the zone/subzone year unless the district director authorizes an extension for reasonable cause. The operator shall retain that annual reconciliation report for a spot check or audit by Customs, and need not furnish it to Customs unless requested. There is no form specified for the preparation of the report.

(b) *Information required.* The report must contain a description of merchandise for each zone lot or unique identifier, zone status, quantity on hand at the beginning of the year, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the year.

(c) *Certification.* The operator shall submit to the district director within 10 working days after the annual reconciliation report, a letter signed by the operator certifying that the annual reconciliation has been prepared, is available for Customs review, and is accurate. The certification letter must contain the name and street address of the operator, where the required records are available for Customs review; and the name, title, and telephone number of the person having custody of the records. Reporting of shortages and overages based on the annual reconciliation will be made in accordance with § 146.53. These reports must accompany the certification letter.

§ 146.26 System review.

The operator shall perform an annual internal review of the inventory control and recordkeeping system and shall report to the district director any deficiency discovered and corrective action taken, to ensure that the system meets the requirements of this part.

SUBPART C—ADMISSION OF MERCHANDISE TO A ZONE

§ 146.31 Admissibility of merchandise into a zone.

Merchandise of every description may be admitted into a zone unless prohibited by law. A distinction is made between prohibited and conditionally admissible merchandise.

(a) *Prohibited merchandise.* District directors shall not admit prohibited merchandise. If there is a question as to whether the merchandise may be prohibited, district directors may permit the temporary deposit of the merchandise in a zone pending a final determination of its status. Any prohibited merchandise which is found within a zone will be disposed of in the manner provided for in the laws and regulations applicable to that merchandise.

(b) *Conditionally admissible merchandise.* The admission of this merchandise into a zone is subject to the regulations of the Federal agency concerned.

§ 146.32 Application and permit for admission of merchandise.

(a) *Application on Customs Form 214 and permit.* Merchandise may be admitted into a zone only upon application on a uniquely and sequentially numbered Customs Form 214 ("Application for Foreign Trade Zone Admission and/or Status Designation") and the issuance of a permit by the district director. Exceptions to the Customs Form 214 requirement are for merchandise temporarily deposited (§ 146.33), transiting merchandise (§ 146.34), or domestic merchandise admitted without permit (§ 146.43). The applicant for admission shall present the application to the district director and shall include a statistical copy on Customs Form 214–A for transmittal to the Bureau of Census, unless the applicant has made arrangements for the direct transmittal of statistical information to that agency.

(b) *Supporting documents.*

(1) *Commercial documentation.* The applicant shall submit with the application two copies of an examination invoice meeting the requirements of Subpart F, Part 141, of this chapter, for any merchandise, other than that excepted in paragraph (a) of this section, to be admitted to a zone. The notation of tariff classification and value required by § 141.90 of this chapter need not be made, unless the merchandise is to be admitted in privileged status.

(2) *Evidence of right to make entry.* The applicant for admission shall submit with the application a document similar to that which would be required as evidence of the right to make entry for merchandise in Customs territory under § 141.11 or 141.12 of this chapter.

(3) *Release order.* Merchandise will not be authorized for delivery by Customs to a zone until a release order has been executed by the carrier which brought the merchandise to the port, unless the merchandise is released back to that same carrier for delivery to the zone (see § 141.11 of this chapter). When a release order is required, it will be made on any of the forms specified in § 141.111 of this chapter, or by the following statement attached to Customs Form 214:

Authority is hereby given to release the merchandise described in this application to _____

_____

Name of carrier_____

_____

Signature and title of carrier representative _____

_____

A blanket or qualified release order may be authorized for the transfer of merchandise to a zone as provided for in § 141.111 of this chapter.

(4) *Application to unlade.* For merchandise unladen in the zone directly from the importing carrier, the application on Customs Form 214 will be supported by an application to unlade on Customs Form 3171.

(5) *Other documentation.* The district director may require additional information or documentation as needed to conduct an examination of merchandise under Customs selective entry processing criteria, or to determine whether the merchandise is admissible to the zone.

(c) *Conditions for issuance of a permit.* The district director will issue a permit for admission of merchandise to a zone when:

(1) The application is properly executed and includes the zone status desired for the merchandise, as provided in Subpart D of this part;

(2) The operator's approval appears either on the application or in a separate specific or blanket approval;

(3) The merchandise is retained for examination at the place of unlading, the zone, or other location designated by the district director, except for merchandise for direct delivery to a zone under §§ 146.39 and 146.40. The merchandise may be examined as if it were to be entered for consumption or warehouse; and

(4) All requirements have been fulfilled.

(d) *Blanket application for admission of merchandise.* Merchandise may be admitted to a zone under blanket application upon presentation of a Customs Form 214 covering more than one shipment of merchandise. A blanket application for admission is for:

(1) Shipments which arrive under one transportation entry as described in § 141.55 of this chapter, or

(2) Shipments which are destined to the same zone applicant on a single business day, in which case the applicant shall:

(i) Present the examination invoices required by paragraph (b) of this section to the district director before the merchandise is admitted into the zone,

(ii) Have been approved for the direct transmittal of statistical trade information to the Bureau of Census under an agreement with that agency; and

(iii) Have examination invoices containing a unique identifier to trace the shipment to the manifest of the carrier that brought the merchandise to the port having jurisdiction over the zone, as well as to the inventory control and recordkeeping system of the operator as described in Subpart B.

§ 146.33 Temporary deposit for manipulation.

Imported merchandise for which an entry has been made and which has remained in continuous Customs custody may be brought temporarily to a zone for manipulation and return to Cus-

toms territory under Customs supervision, pursuant to § 562, Tariff Act of 1930, as amended (19 U.S.C. 1562), and § 19.11 of this chapter. That merchandise will not be considered within the purview of the Act but will be treated as though remaining in Customs territory. No zone form or procedure will be considered applicable, but the merchandise will remain subject to any requirements necessary for the enforcement of § 562 and other Customs laws while in the zone.

§ 146.34 Merchandise transiting a zone.

The following procedure is applicable when merchandise is to be unladen from any carrier in the zone for immediate transfer to Customs territory, or if it is to be transferred from Customs territory through the zone for immediate lading on any carrier in the zone:

(a) *Application.* Application for permission to lade or unlade will be filed with the district director on Customs Form 3171 prior to transfer of the merchandise into the zone.

(b) *Permit.* The district director shall permit the transfer unless he has reason to believe that the merchandise will not be moved promptly from the zone or will be made the subject of an application for admission in accordance with § 146.32(a).

(c) *Treatment of merchandise.* Upon the issuance of a permit to lade, or unlade, the merchandise will be treated as though the lading or unlading were in the Customs territory.

(d) *Delay in zone transit.* Merchandise delayed while transiting a zone must be made the subject of an application for admission in accordance with § 146.32, or it must be removed from the zone.

§ 146.35 Temporary deposit in a zone; Incomplete documentation.

(a) *General.* Temporary deposit of merchandise in a zone is allowed in circumstances where the information or documentation necessary to complete the Customs Form 214 is not available at the time of arrival of merchandise within the jurisdiction of the port. The merchandise will be subject to examination as provided in § 146.36.

(b) *Application.* An application for temporary deposit will be made to the district director on a properly signed and uniquely numbered Customs Form 214, annotated clearly "Temporary Deposit in a Zone".

(c) *Conditions.* Merchandise temporarily deposited under the provisions of this section has no zone status and is considered to be in the Customs territory. It will:

(1) Be physically segregated from all other zone merchandise;

(2) Be held under the bond and at the risk of the operator; and

(3) Be manipulated only to the extent necessary to obtain sufficient information about the merchandise to file the appropriate admission or entry documentation.

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(d) *Approval.* The district director shall approve the application for temporary deposit of merchandise in a zone if the provisions of paragraphs (b) and (c) are met.

(e) *Submission of Customs Form 214.* A complete and accurate Customs Form 214 will be submitted, as provided in § 146.32, within 5 working days plus any extension granted by the district director, or the merchandise shall be placed in general order.

§ 146.36 Examination of merchandise.

Except for direct delivery procedures provided for in § 146.39, all merchandise covered by a Customs Form 214 may be retained for Customs examination at the place of unlading, the zone, or another location, as designated by the district director. The district director may authorize release of the merchandise without examination, as provided in § 151.2 of this chapter. If a physical examination is conducted, the Customs officer shall note the results of the examination on the examination invoices.

§ 146.37 Operator admission responsibilities.

(a) *Maintenance admission documentation.* The operator shall maintain either:

(1) *Lot file.* The operator shall open and maintain a lot file containing a copy of the Customs Form 214, the examination invoice, and all other documentation necessary to account for the merchandise covered by each Customs Form 214. The lot file will be maintained in sequential order by using the unique number assigned to each Customs Form 214 as the file reference number; or

(2) *Authorized inventory method.* Where a Customs authorized inventory method other than a lot system (specific identification of merchandise) is used, e.g., First-In-First-Out (FIFO), no lot file is required but the operator shall maintain a file of all Customs Form's 214 in sequential order.

(b) *Examination invoice.* The operator shall give a copy of the examination invoice to the person making entry to transfer the merchandise from the zone upon request of that person or the district director.

(c) *Liability for merchandise.* The operator will be held liable under its bond for the receipt of merchandise admitted in the quantity and condition as described on the Customs Form 214, except as modified by a discrepancy report:

(1) Signed jointly by the operator and carrier on the Customs Form 214 or other approved form within 15 days after admission of the merchandise, and reported to the district director within 2 working days thereafter; or

(2) Submitted on Customs Form 5931 under the provisions of Subpart A, Part 158, of this chapter within 20 days after admission of the merchandise. The operator may file a Customs Form 5931 on behalf of the person who applied for admission of merchandise to the zone.

(d) *Supervision of merchandise.* The district director may authorize the receipt of zone status merchandise at a zone without physical supervision by a Customs officer (see section 146.3). In that case, the operator shall supervise the receipt of merchandise into the zone, report the receipt and condition of the merchandise, and mark packages with the unique Customs Form 214 number so that the merchandise can be traced to a particular Customs Form 214. Packages that are accounted for under a Customs-authorized inventory method other than specific indentification, need not be marked with a unique Customs Form 214 number but must be adequately identified so Customs can conduct an inventory count. The operator shall submit the Customs Form 214 to Customs at the location specified by the district director.

§ 146.38 Certificate of arrival of merchandise.

When a certificate prepared by Customs as to the arrival of any merchandise in a zone is required by a Federal agency, the district director shall issue the document certifying only that authorization to deliver the merchandise to a zone has been made. The operator shall issue a certificate of arrival of merchandise at a zone.

§ 146.39 Direct delivery procedures.

(a) *General.* This procedure is for delivery of merchandise to a zone without prior application and approval on Customs Form 214.

(b) *Application.* An operator, meeting the criteria of paragraph (c) of this section, shall file a written application with the district director at least 30 days before the special procedure is to become effective. The application will describe the merchandise to be handled or processed, and the kind of operation which it will undergo in the zone.

(c) *Criteria.* the district director shall approve the application if the following criteria are met:

(1) The merchandise is not restricted or of a type which requires Customs examination or documentation review before or upon its arrival at the zone;

(2) The merchandise to be admitted to the zone, and the operations to be conducted therein, are known well in advance, are predictable and stable over the long term, and are relatively fixed in variety by the nature of the business conducted at the site; and

(3) The operator is the owner or purchaser of the goods.

(d) *Application decision.* The district director shall promptly notify the operator, in writing, of Customs decision on the application. If the application is denied, the district director shall specify the reason for denial in his reply. The district director's decision will constitute the final Customs administrative determination concerning the application.

(e) *Revocation of approval.* The district director may revoke the approval given under this section if it becomes necessary for Cus-

toms routinely to examine the merchandise or documentation before or upon admission to the zone.

§ 146.40 Operator responsibilities for direct delivery.

(a) *Arrival of conveyance.* Upon arrival at a subzone or zone site of a conveyance containing foreign merchandise, the operator shall:

(1) Collect in-bond or cartage documentation from the carrier;

(2) Check the condition of any seal affixed to the conveyance, and if broken, missing or improperly affixed, notify the district director and receive instructions before unloading the merchandise;

(3) Check each incoming in-bond and cartage shipment to determine if the manifested quantity or the quantity on the cartage document agrees with the quantity actually received;

(4) Sign and date the in-bond or cartage documentation to accept responsibility for the merchandise under the Foreign Trade Zone Operator' Bond and to relieve the carrier of responsibility.

(5) Forward the in-bond or cartage documentation so as to reach the district director within 2 working days after the date of arrival of the conveyance at the subzone or zone site;

(6) Maintain a file of open in-bond manifests in chronological order of date of conveyance arrival to identify shipments that have arrived but the entire contents of which have not been admitted to the subzone or zone site; and

(7) Notify the district director, by annotation on the Customs Form 214, when the entire contents of a shipment have been admitted.

(b) *Admission of merchandise: alternative procedures.*

(1) *Cumulative Customs Form 214.* If the operator has an agreement with the Bureau of Census for direct transmittal of statistical information, he shall submit to the district director each business day a properly signed and uniquely numbered Customs Form 214 listing all merchandise except for domestic status merchandise admitted under § 146.43 recorded into the inventory control and recordkeeping system during the previous business day. The Customs Form 214 must contain a list of all in-bond (I.T.) numbers or the unique number of any cartage document, as well as the number of invoices for each I.T. or cartage document, pertaining to merchandise which has been entered into the system.

(2) *Individual Customs Form 214.* If a cumulative Customs Form 214 is not submitted as provided in paragraph (b)(1) of this section, the operator shall file with the district director each business day an individual Customs Form 214 and 214-A covering each shipment recorded into the inventory control and recordkeeping system during the previous business day. The forms shall be submitted within 10 days after the end of the month in which the merchandise was received in the zone, and no extension beyond that time will be approved by the district director.

(3) *General order.* Merchandise which is not admitted into a subzone or zone site as provided in this section within 5 working days after its arrival there may be sent to general order unless:

(i) The district director grants the operator's request for an extension of the 5 working day period; or

(ii) The importer of record files an appropriate Customs entry for the merchandise and removes it from the zone premises.

(4) *inventory control and recordkeeping system.* The operator shall establish and maintain a continuing input quality control program to ensure that information concerning merchandise in admission documents, verified or corrected by counts and checks, is accurately recorded in the inventory control and recordkeeping system. Quantities recorded in the system, after allowance by the district director for any discrepancies, will be the quantities of merchandise for which the operator shall be held liable under its bond for admission to the subzone or zone site. A discrepancy involving a within-case shortage (or overage) need not be reported on Customs Form 5931, if the operator is able to report that information in another manner so that the district director can determine whether there is liability for the discrepancy under the bond of any party to the importation.

Subpart D—Status of Merchandise in a Zone

§ 146.41 Privileged foreign status.

(a) *General.* Foreign merchandise which has not been manipulated or manufactured so as to effect a change in tariff classification will be given status as privileged foreign merchandise on proper application to the district director.

(b) *Application.* Each application for this status will be made on Customs Form 214 at the time of filing the application for admission of the merchandise into a zone or at any time thereafter before the merchandise has been manipulated or manufactured in the zone in a manner which has effected a change in tariff classification.

(c) *Supporting documentation.* Each applicant for this status shall submit to the district director, with the application, an invoice notated as provided for in § 141.90 of this chapter.

(d) *Determination of duties and taxes.* Upon receipt of the application and accompanying invoice, the district director may examine the merchandise to determine whether to approve the application. The merchandise will be subject to classification and valuation as provided in § 146.65.

(e) *Status as privileged foreign merchandise binding.* A status as privileged foreign merchandise cannot be abandoned and remains applicable to the merchandise even if changed in form by manipulation or manufacture, except in the case of recoverable waste (see § 146.42(b)), as long as the merchandise remains within the purview of the Act. However, privileged foreign merchandise may be export-

ed or withdrawn for supplies, equipment, or repair material of vessels or aircraft without the payment of taxes and duties, in accordance with §§ 146.67 and 146.69.

§ 146.42 Nonprivileged foreign status.

All of the following will have the status of nonprivileged foreign merchandise:

(a) *Foreign merchandise.* Foreign merchandise properly in a zone which does not have the status of privileged foreign merchandise or of zone-restricted merchandise;

(b) *Waste.* Waste recovered from any manipulation or manufacture of privileged foreign merchandise in a zone; and

(c) *Certain domestic merchandise.* Domestic merchandise in a zone, which by reason of noncompliance with the regulations in this part has lost its identity as domestic merchandise, will be treated as foreign merchandise. Any domestic merchandise will be considered to have lost its identity if the district director determines that it cannot be identified positively by a Customs officer as domestic merchandise on the basis of an examination of the articles or consideration of any proof that may be submitted promptly by a party-in-interest.

§ 146.43 Domestic status.

(a) *General.* Domestic status may be granted to merchandise:

(1) The growth, product, or manufacture of the U.S. on which all internal-revenue taxes, if applicable, have been paid;

(2) Previously imported and on which duty and tax has been paid; or

(3) Previously entered free of duty and tax.

(b) *Application.* No application or permit is required for the admission of domestic status merchandise, including domestic packing and repair material, to a zone, except upon order of the Commissioner of Customs. No application or permit is required for the manipulation, manufacture, exhibition, destruction, or transfer to Customs territory of domestic status merchandise, including packing and repair materials, except (1) when it is mixed or combined with merchandise in another zone status, or (2) upon order of the Commissioner of Customs. When the Commissioner orders a permit to be required for domestic status merchandise, he may also order the procedures, forms, and terms under which the permit will be received and processed.

(c) *Return of merchandise to Customs territory.* Upon compliance with the provisions of this section, any of the merchandise specified in paragraph (a) of this section, may subsequently be returned to Customs territory free of quotas, duty, or tax.

§ 146.44 Zone-restricted status.

(a) *General.* Merchandise taken into a zone for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage will be given zone-

restricted status on proper application. That status may be requested at any time the merchandise is located in a zone, but cannot be abandoned once granted. Merchandise in zone-restricted status may not be removed to Customs territory for domestic consumption except where the Board determines the return to be in the public interest.

(b) *Application.* Application for zone-restricted status will be made on Customs Form 214.

(c) *Merchandise considered exported.*

(1) *For Customs purposes.* If the applicant desires a zone-restricted status in order that the merchandise may be considered exported for the purpose of any Customs law, all pertinent Customs requirements relating to an actual exportation shall be complied with as though the admission of the merchandise into the zone constituted a lading on an exporting carrier at a port of final exit from the U.S. Any declaration or form required for actual exportation will be modified to show the merchandise has been deposited in a zone in lieu of actual exportation, and a copy of the approved Customs Form 214 may be accepted in lieu of any proof of shipment required in cases of actual exportation.

(2) *For other purposes.* If the merchandise is to be considered exported for the purpose of any Federal law other than the Customs laws, the district director shall be satisifed that all pertinent laws, regulations, and rules administered by the Federal agency concerned have been complied with before the Customs Form 214 is approved.

(d) *Merchandise entered for warehousing transferred to a zone.* Merchandise entered for warehousing and transferred to a zone, other than temporarily for manipulation and return to Customs territory as provided for in § 146.33, will have the status of zone-restricted merchandise when admitted into the zone. The application on Customs Form 214 will state that zone-restricted status is desired for the merchandise.

Subpart E—Handling of Merchandise in a Zone

§ 146.51 Customs control of merchandise.

No merchandise, other than domestic status merchandise provided for in § 146.43, will be manipulated, manufactured, exhibited, destroyed, or transferred from a zone in any manner or for any purpose, except under Customs permit as provided for in this part. The district director may require segregation of any zone status merchandise whenever necessary to protect the revenue or properly administer U.S. laws or regulations.

§ 146.52 Manipulation, manufacture, exhibition or destruction; Customs Form 216.

(a) *Application.* Prior to any action, the operator shall file with the district director an application (or blanket application) on Cus-

toms Form 216 for permission to manipulate, manufacture, exhibit, or destroy merchandise in a zone. After Customs approves the application (or blanket application), the operator will retain in his recordkeeping system the approved application.

(b) *Approval.*

(1) The district director shall approve the application unless (i) the proposed operation would be in violation of law or regulation; (ii) the place designated for its performance is not suitable for preventing confusion of the identify or status of the merchandise, or for safeguarding the revenue; (iii) the district director is not satisfied that the destruction will be effective; or (iv) the Executive Secretary of the Board has not granted approval of a new manufacturing operation.

(2) The district director is authorized to approve a blanket application for a period of up to one year for a continuous or repetitive operation. The district director may disapprove or revoke approval of any application, or may require the operator to file an individual application.

(c) *Appeal of adverse ruling.* If an approved application is subsequently rescinded by the district director for any reason, the applicant or grantee may appeal the adverse ruling pursuant to the hearing provisions of § 146.82(b)(2). The rescission shall remain in effect pending the decision on the appeal.

(d) *Report results.*

(1) *Separate application.*—The operator shall report on Customs Form 216 the results of an approved manipulation, manufacture, exhibition, or certification of destruction (other than by a blanket application), unless the district director chooses physically to supervise the operation.

(2) *Blanket application.*—The operator shall maintain a record of an approved manipulation, manufacture, exhibition, or certification of destruction, in its inventory control and recordkeeping system so as to provide an accounting and audit trail of the merchandise through the approved operation.

(e) *Destruction.*

The district director may permit destruction to be done outside the zone, in whole or in part and at the risk and expense of the applicant, and under such conditions as are necessary to protect the revenue, if proper destruction cannot be accomplished within the zone. Any residue from the destruction within a zone, which is determined to be without commercial value, may be removed to Customs territory for disposal.

§ 146.53 Shortages and overages.

(a) *Report required.* The operator shall report, in writing, to the district director upon identification, as such, of any:

(1) Theft or suspected theft of merchandise;

(2) Merchandise not properly admitted to the zone; or

(3) Shortage of one percent (1%) or more of the quantity of merchandise in a lot or covered by a unique identifier, if the missing merchandise would have been subject to duties and taxes of $100 or more upon entry into the Customs territory. The operator shall record upon identification all shortages and overages, whether or not they are required to be reported to the district director at that time, in its inventory control and recordkeeping system. The operator shall record all shortages and overages as required in the annual reconciliation report under § 146.25.

(b) *Certain domestic merchandise.* Except in a case of theft or suspected theft, the operator need not file a report with the district director, or note in the annual reconciliation report, any shortage or overage concerning domestic status merchandise for which no permit is required.

(c) *Shortage.*

(1) *Operator responsibility.* The operator is responsible under its Foreign Trade Zone Operator's Bond for any loss of merchandise or for any merchandise which cannot be located or otherwise accounted for (except domestic status merchandise for which no permit is required), unless the district director is satisfied that the merchandise was:

(i) Never received in the zone;

(ii) Removed from the zone under proper permit;

(iii) Not removed from the zone; or

(iv) Lost or destroyed in the zone through fire or other casualty, evaporation, spillage, leakage, absorption, or similar cause, and did not enter the commerce of the U.S.

(2) *Liability for duty and taxes.* Upon demand of the district director, the operator shall make entry for and pay duties and taxes applicable to merchandise which is missing or otherwise not accounted for.

(d) *Overage.* The person with the right to make entry shall file, within 5 days after identification of an overage, an application for admission of the merchandise to the zone on Customs Form 214 or file a Customs entry for the merchandise. If a Customs Form 214 or a Customs entry is not timely filed, and the district director has not granted an extension of the time provided, the merchandise shall be sent to general order.

(e) *Damage.* The liability of the operator under its Foreign Trade Zone Operator's Bond may be adjusted for the loss of value resulting from damage to merchandise occurring in the zone. The operator shall segregate, mark, and otherwise secure damaged merchandise to preserve its identiy as damaged merchandise.

SUBPART F—TRANSFER OF MERCHANDISE FROM A ZONE

§ 146.61 Constructive transfer to Customs territory.

The district director shall accept receipt of any entry in proper form provided under this subpart, and the merchandise described

therein will be considered to have been constructively transferred to Customs territory at that time, even though the merchandise remains physically in the zone. If the entry is thereafter rejected or cancelled, the merchandise will be considered at that time to be constructively transferred back into the zone in its previous zone status.

§ 146.62 Entry.

(a) *General.* Entry for foreign merchandise which is to be transferred from a zone, or removed from a zone for exportation or transportation to another port, for consumption or warehouse, will be made on Customs Form 7512, Customs Form 3461, Customs Form 7501, or other applicable Customs forms. If entry is made on Customs Form 3461, the person making entry shall file an entry summary for all the merchandise covered by the Customs Form 3461 within 10 working days after the time of entry.

(b) *Documentation.* Customs Form 7501 or the entry summary will be accompanied by the entry documentation, including invoices, as provided in Parts 141 and 142 of this chapter. The person with the right to make entry shall submit any other supporting documents required by law or regulations that relate to the transferred merchandise and provide the information necessary to support the admissibility, the declared values, quantity, and classification of the merchandise. If the declared values are predicated on estimates or estimated costs, that information must be clearly stated in writing at the time an entry or entry summary is filed.

Customs Form 7512 for merchandise to be transferred to another port or zone or for exportation shall state that the merchandise covered is foreign trade zone merchandise; give the number of the zone from which the merchandise was transferred; state the status of the merchandise; and, if applicable, bear the notation or endorsement provided for in § 146.64(c), 146.66(b), or 146.70(c).

(c) *Waiver of supporting documents.* The district director may waive presentation of an invoice and supporting documentation required in paragraph (b) of this section with the entry or entry summary, if satisfied that presentation of those documents would be impractical, and the person making entry or the operator either files invoices and supporting documentation with the district director or maintains and makes those records available for examination by Customs.

§ 146.63 Entry for consumption.

(a) *Foreign merchandise.* Merchandise in foreign status or composed in part of merchandise in foreign status may be entered for consumption from a zone.

(b) *Zone-restricted merchandise.* Merchandise in a zone-restricted status may be entered for consumption only when the Board has ruled that merchandise can be entered for consumption.

(c) *Estimated production.*

(1) *Weekly entry.* When merchandise is manufactured or otherwise changed in a zone (exclusive of packing) to its physical condition as entered within 24 hours before physical transfer from the zone for consumption, the district director may allow the person making entry to file an entry on Customs Form 3461 for the estimated removals of merchandise during the calendar week. The Customs Form 3461 must be accompanied by a *pro forma* invoice or schedule showing the number of units of each type of merchandise to be removed during the week and their zone and dutiable values. Merchandise covered by an entry made under the provisions of this section will be considered to be entered and may be removed only when the district director has accepted the entry on Customs Form 3461. If the actual removals will exceed the estimate for the week, the person making entry shall file an additional Customs Form 3461 to cover the additional units before their removal from the zone. Notwithstanding that a weekly entry may be allowed, all merchandise will be dutiable as provided in § 146.65. When estimated removals exceed actual removals, the excess merchandise will not be considered to have been entered or constructively transferred to the Customs territory.

(2) *Individual transfers.* After acceptance of the weekly entry, individual transfers of merchandise covered by the entry may be made from the zone.

(d) *Textiles and textile products.* Subject to the existing statutory authority of the Board, textiles and textile products admitted into a zone, regardless of whether the merchandise has privileged or nonpriviledged foreign status, which would have been subject to quota or visa or export license requirements in their condition at the time of importation (if entered for consumption rather than admitted to a zone), may not be subsequently transferred into the Customs territory for consumption if, during the time the merchandise is in the zone, there has been a change by manipulation, manufacture, or other means:

(1) In the country of origin of the merchandise as defined by § 12.130 of this chapter;

(2) To exempt from quota or visa or export license requirements other than a change brought about by statute, treaty, executive order or Presidential proclamation; or

(3) From one textile category to another textile category.

§ 146.64 Entry for warehouse.

(a) *Foreign merchandise.* Merchandise in privileged foreign status or composed in part of merchandise in privileged foreign status may not be entered for warehouse from a zone. Merchandise in nonprivileged foreign status containing no components in privileged foreign status may be entered for warehouse in the same or at a different port.

(b) *Zone-restricted merchandise.* Foreign merchandise in zone-restricted status may be entered for warehouse in the same or at a

different port only for storage pending exportation, unless the Board has approved another disposition.

(c) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be entered for warehouse only if the entry is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(d) *Time limit.* Merchandise may neither be placed nor remain in a Customs bonded warehouse after 5 years from the date of importation of the merchandise.

§ 146.65 Classified, valuation, and liquidation.

(a) *Classification.*

(1) *Privileged foreign merchandise.* Privileged foreign merchandise provided for in this section will be subject to tariff classification according to its character, condition and quantity, at the rate of duty and tax in force on the date of filing, in complete and proper form, the application for privileged status. Classification of merchandise subject to a tariff-rate import quota will be made only at the higher non-quota duty rate in effect on the date privileged foreign status was granted.

(2) *Nonprivileged foreign merchandise.* Nonprivileged foreign merchandise provided for in this section will be subject to tariff classification in accordance with its character, condition and quantity as constructively transferred to Customs territory at the time the entry or entry summary is filed with Customs.

(b) *Valuation.*

(1) *Total zone value.* The total zone value of merchandise provided for in this section will be determined in accordance with the principles of valuation contained in §§ 402 and 500 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a, 1500). The total zone value shall be that price actually paid or payable to the zone seller in the transaction that caused the merchandise to be transferred from the zone. Where there is no price paid or payable, the total zone value shall be the cost of all materials and zone processing costs related to the merchandise transferred from the zone.

(2) *Dutiable value.* The dutiable value of merchandise provided for in this section shall be the price actually paid or payable for the merchandise in the transaction that caused the merchandise to be admitted into the zone less, if included, international shipment and insurance costs and U.S. inland freight costs. If there is no such price actually paid or payable, or no reasonable representation of that cost, the dutiable value may be determined by excluding from the zone value any included zone costs of processing or fabrication, general expenses and profit and the international shipment and insurances costs and U.S. inland freight costs related to the merchandise transferred from the zone. The dutiable value of recoverable waste or scrap provided for in § 146.42(b) will be the

price actually paid or payable to the zone seller in the transaction that caused the recoverable waste or scrap to be transferred from the zone.

(3) *Allowance.* An allowance in the dutiable value of zone merchandise may be made by the district director in accordance with the provisions of Subparts B and C of Part 158 of this chapter, for damage, deterioration, or casualty while the merchandise is in the zone.

(c) *Liquidation; extension to update cost data.* When the declared value of values of the merchandise are based on an estimate or estimates, the person making entry may request an extension of liquidation pending the presentation of updated or actual cost data. A request for an extension may be granted at the discretion of the district director.

§ 146.66 Transfer of merchandise from one zone to another.

(a) *At the same port.* A transfer of merchandise to another zone with a different operator at the same port (including a consolidated port) will be by a licensed cartman under an entry for immediate transportation on Customs Form 7512 or other appropriate form with a Customs Form 214 filed at the destination zone. A transfer of merchandise between zone sites at the same port having the same operator may be made under a permit on CF 6043 or under a local control system approved by the district director wherein any loss of merchandise between sites will be treated as if the loss occured in the zone.

(b) *At a different port.* A transfer of merchandise from a zone at one port of entry to a zone at another port will be by bonded carrier under an entry for immediate transportation on Customs Form 7512. All copies of the entry must bear a notation that the merchandise is being transferred to another zone designated by its number.

(c) *Forwarding of merchandise history; documentation.* When merchandise is transferred under the provisions of this section, the operator of the transferring zone shall provide the operator of the destination zone with the documented history of the merchandise being transferred.

(1) The following documentation must accompany merchandise maintained under a lot inventory control system:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise and all components thereof;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise or its components; and

(iii) A copy of any Customs Form 216 to manipulate or manufacture the merchandise.

(2) The following documentation must accompany merchandise not under a lot system, and not manufactured in a zone:

(i) A copy of the original Customs Form(s) 214 with accompanying invoices for admission of the merchandise as attributed under the particular zone inventory method;

(ii) A copy of any Customs Form 214 filed subsequent to admission to change the status of the merchandise as attributed under the particular zone inventory method; and

(iii) A copy of any Customs Form 216 to manipulate the merchandise as attributed under the particular zone inventory method.

(3) If the documents specified in paragraph (c)(2) of this section are not presented, the operator of the transferring zone shall submit the following:

(i) A statement of the zone value, dutiable value, quantity, description, unique identifier, and zone status (showing any changes of status after admission and whether the merchandise was manipulated so as to change its tariff classification) of all the merchandise in the shipment covered by the transportation entry; and

(ii) A certification that the statement in paragraph (c)(3)(i) of this section, is true and that the information contained therein is contained in the inventory control and recordkeeping system of the transferring zone.

(4) The following documentation must accompany merchandise not under a lot system, but manufactured in a zone:

(i) A statement by the transferring zone operator of the zone value, dutiable value, quantity, description, unique identifier, and zone status of all the merchandise (and components thereof, where applicable) covered by the transportation entry. The statement will also show any change in zone status in the transferring zone and whether the merchandise has been manufactured or manipulated in the zone so as to change its tariff classification; and

(ii) A certification by the operator of the transferring zone that the statement in paragraph (c)(4)(i) of this section is true and the information therein is contained in the inventory control and recordkeeping system of the zone.

(5) The operator of the transferring zone shall transmit the historical documentation of the merchandise to the receiving zone within 10 working days after it has been delivered to the bonded carrier for transportation. The documentation will be referenced to the I.T. number covering the merchandise.

(d) *Arrival at destination zone.* Upon arrival of the merchandise at the destination zone, it will be admitted under the procedure provided for in § 146.32, except that no invoice or Customs examination will be required. When the historical documentation is received, the operator of the destination zone shall associate it with the Customs Form 214 for admission of the merchandise and incorporate that information into the zone inventory control and recordkeeping system.

§ 146.67 Transfer of merchandise for exportation.

(a) *Direct exportation.* Any merchandise in a zone may be exported directly therefrom (without transfer into Customs territory) upon compliance with the procedures of paragraph (b) of this section.

(b) *Immediate exportation.* Each transfer of merchandise to the Customs territory for exportation at the port where the zone is located, will be made under an entry for immediate exportation on Customs Form 7512. The person making entry shall furnish an export bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(c) *Transporation and exportation.* Each transfer of merchandise to the Customs territory for transportation to and exportation from a different port, will be made under an entry for transportation and exportation on Customs Form 7512. The bonded carrier will be responsible for exportation of the merchandise in accordance with § 18.26 of this chapter.

(d) *Textiles and textile products.* Textiles and textile products which have been changed as provided for in § 146.63(d) may be exported and returned to Customs territory for warehousing provided the entry for warehouse is endorsed by the district director to show that the merchandise may not be withdrawn for consumption.

(e) *Merchandise produced or manufactured in a zone and returned to Customs territory after exportation.* Merchandise produced or manufactured in a zone and exported without having been transferred to Customs territory other than for exportation or for transportation and exportation will be subject, on its return to Customs territory, to the duties and taxes applicable to like articles of wholly foreign origin, unless it is conclusively established that it was produced or manufactured exclusively with the use of domestic merchandise. The identity of the domestic merchandise must have been maintained in accordance with the provisions of this part, in which case that merchandise will be subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 146.68 Transfer for transportation or exportation; estimated production.

(a) *Weekly permit.* The district director may allow the person making entry for merchandise provided for in § 146.63(c) to file an application for a weekly permit to enter and release merchandise during a calendar week for exportation, transportation, or transportation and exportation. The application will be on Customs Form 7512 stating at the top the words "Application for Weekly Zone Permit," and will be filed with the district director. The application must be accompanied by a *pro forma* invoice or schedule like that required in § 146.63(c)(1). If actual transfers will exceed the estimate for the week, the person with the right to make entry shall

file a supplemental Customs Form 7512 to cover the additional merchandise to be transferred from the subzone or zone site. No merchandise covered by the weekly permit may be transferred from the zone before approval of the application by the district director.

(b) *Individual entries.* After approval of the application for a weekly permit by the district director, the pereson making entry will be authorized to execute individual Customs Forms 7512 for exportation, transportation, or transportation and exportation of the merchandise covered by permit. Upon transfer of the merchandise, the operator shall obtain a receipt from the carrier on Customs Form 7512 to ensure its assumption of liability under the carrier's or cartman's bond. Customs will consider the time of entry to be when the removing carrier signs the receipt for the merchandise. The operator shall give the bonded carrier a copy of the individual Customs Form 7512 and the destination copy (Customs Form 7512–C), as provided for in § 18.2(c) of this chapter. The operator also shall ensure that the district director receives a copy of the Customs Form 7512 and the origin copy (Customs Form 7512–C) by the end of the next working day after the carrier has receipted for the merchandise.

(c) *Statement of merchandise entered.* The person making entry for merchandise under an approved weekly permit shall file with the district director, by the close of business on the second working day of the week following the week designated on the permit, a statement of the merchandise entered under that permit. The statement must list each Customs Form 7512 by its unique I.T. number, and will provide a reconciliation of the quantities on the weekly permit with the manifested quantities on the individual Customs Forms 7512 submitted to Customs, as well as an explanation of any discrepancy.

§ 146.69 Supplies, equipment, and repair material for vessels or aircraft.

(a) *General.* Any merchandise which may be withdrawn duty and tax free in Customs territory under § 309 or § 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), and under §§ 10.59 through 10.65 of this chapter, may similarly be transferred from a zone, regardless of its zone status, under those statutes and regulations. Each transfer from a zone for delivery to a qualified vessel or aircraft, will be made on Customs Form 7512 (see § 10.60 of this chapter). The person making entry shall furnish a bond on Customs Form 301 containing the bond conditions provided for in § 113.62 of this chapter.

(b) *Merchandise for delivery within zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the qualified vessel or aircraft for lading in the zone.

(c) *Merchandise for delivery outside zone.* Upon acceptance of the entry and bond, the district director shall release the merchandise to the operator for delivery to the bonded cartmen, lighterman, or carrier, for transportation through the Customs territory to the qualified lading vessel or aircraft.

§ 146.70 Transfer of zone-restricted merchandise into Customs territory.

(a) *General.* Zone-restricted merchandise may be transferred to Customs territory only for entry for exportation, for entry for transportation and exportation, for warehousing pending exportation, for destruction (except destruction of distilled spirits, wines and fermented malt liquors), for transfer from one zone to another, or for delivery to a qualified vessel or aircraft or as ground equipment of a qualified aircraft under § 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), unless the Board has ruled that the return of the merchandise to Customs territory for domestic consumption is in the public interest. With Board approval (See 15 CFR Part 400), that merchandise may be entered for consumption, for warehousing, for immediate transportation without appraisement, or under any other provision of the Customs laws, unless the Board has specified the form of entry to be made.

(b) *For consumption.* If the return of zone-restricted merchandise to Customs territory for consumption has been ruled by the Board to be in the public interest, the entry shall be endorsed by the district director to show the authority under which it was made, and that the merchandise is subject to the provisions of Schedule 8, Part 1, Tariff Schedules of the United States (19 U.S.C. 1202).

(c) *For warehousing.* Zone-restricted merchandise may be transferred from a zone to a Customs bonded warehouse for storage pending exportation. The Customs Form 7501 shall be endorsed by the district director to show that the merchandise may not be withdrawn for consumption. In the case of zone-restricted merchandise transported in bond to another port for warehousing and exportation, Customs Form 7512 shall be endorsed by the district director to show that the merchandise in foreign trade zone merchandise in zone-restricted status, which shall be entered for warehouse with proper endorsement on Customs Form 7501, and which may not be withdrawn for consumption. Zone-restricted merchandise transferred from a zone to a Customs bonded warehouse may not be manipulated, except for packing or unpacking incidental to exportation.

(d) *For other purposes.* Upon acceptance of an entry or withdrawal for zone-restricted merchandise for any purpose other than that described in a Board order, the entry shall be endorsed by the person making entry to show that actual exportation of the merchandise is required by the fourth proviso to § 3 of the Act, as amended, or the entry endorsed to require delivery to a qualified

vessel or aircraft, under § 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317).

§ 146.71 Release and removal of merchandise from zone.

(a) *General.* Except as provided for in § 146.43, no merchandise will be transferred from a zone without a Customs permit on the appropriate entry or withdrawal form or other document as required in this part. The district director may authorize transfer from a zone without physical supervision or examination by a Customs officer. Upon issuance of a permit, the district director will authorize delivery of the merchandise only to the operator, who then may release the merchandise to the importer or carrier.

(b) *Liability for discrepancy.* When a transfer is not physically supervised by a Customs officer, the operator will be relieved of responsibility only for the merchandise in a zone in the condition and quantity as shown on the entry, withdrawal, or other appropriate form. The operator will be relieved of responsibility only if it receives the signed receipt on the document of the importer or the carrier named in that document. The responsibility of the operator may be adjusted by any discrepancy report made jointly by the operator and the bonded cartman, lighterman, or carrier, or the importer, and signed by the above or an authorized representative within 15 days after transfer of the merchandise from the zone. Any adjustment must be noted on the permit copy of the entry, withdrawal, or other appropriate form or document. A copy of any joint report of discrepancy must be submitted to the district director within 10 working days of signing by the parties.

(c) *Time limit.* Except in the case of articles for use in a zone, merchandise for which a Customs permit for transfer to Customs territory has been issued must be physically removed from the zone within 5 working days of issuance of that permit. The district director, upon request of the operator, may extend that period for good cause. Merchandise awaiting removal within the required time limit will not be further manipulated or manufactured in the zone, but will be segregated or otherwise identified by the operator as merchandise that has been constructively transferred to Customs territory.

(d) *Retention or return of merchandise to zone for consumption.*

(1) The district director shall cancel any entry for consumption where (i) the merchandise is not removed from the zone within the period specified in paragraph (c) of this section, or (ii) the merchandise was removed from the zone but did not enter the commerce of the U.S. in Customs territory and was subsequently readmitted to a zone in domestic status. If the district director has reason to believe any new entry would be cancelled under the provisions of this subparagraph, he may reject the entry or demand a written stipulation, as a condition of entry acceptance, that the merchandise will not be returned to a zone in domestic status. Merchandise cov-

ered by an entry which has been cancelled under this subparagraph shall be restored to its last foreign status.

(2) A component of merchandise which has been entered, but not physically removed from a zone, shall be restored to its last zone status, provided the district director determines that the component was included in the entry through clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of the law. Such an error, including that in appraisement of any entry or liquidation due to the above circumstances, may be corrected pursuant to § 520(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1520(c)(1)), in accordance with the procedures described in Part 173 of this chapter. If the district director decides there has been no error, mistake, or inadvertence, or that the information was not timely provided, the component will be considered as an overage and subject to the provisions of § 146.53(d).

(3) When merchandise which has been entered for consumption is subsequently returned to a zone for a reason other than that specified in subparagraph (d)(1), it shall be admitted in domestic status.

Subpart G—Penalties; Suspension; Revocation

§ 146.81 Penalties.

(a) *Amount.* Upon violation of the Act, or any regulation issued under the Act, by the grantee, or any officer, agent, operator or employee thereof, the person responsible for or permitting the violation shall be subject to a fine of not more than $1,000. Each day during which a violation continues will constitute a separate offense. Liquidated damages, where applicable, will be imposed in addition to the fine (19 U.S.C. 81s).

(b) *Review.* All fines assessed by the district director under this section will be reviewed by the Director, Entry Procedures and Penalties Division, Headquarters, to determine whether further action against the grantee or operator, such as suspension or a recommendation for revocation of the grant, is warranted.

§ 146.82 Suspension.

(a) *For cause.* The district director may suspend for cause the activated status of a zone or zone site, or the privilege to admit, manufacture, manipulate, exhibit, destroy, transfer or remove merchandise at a zone or zone site for a period not to exceed 90 days. Upon order of the Board the suspension may be continued. If appropriate, the suspension may be limited to an individual user or users and not to the zone or zone site as a whole, or may be limited to a particular activity of an operator or user, such as suspension of the privilege to admit merchandise or the privilege to manufacture. An action to suspend will be taken in accordance with the procedure in paragraph (b) of this section if:

(1) The approval of the application to activate the zone was obtained through fraud or the misstatement of a material fact;

(2) The operator neglects or refuses to obey any proper order of a Customs officer or any Customs order, rule, or regulation relating to the operation or administration of a zone;

(3) The operator, or any officer of a corporation which has been granted the right to operate a zone, is convicted of or has committed an act that would constitute a felony, or would constitute a misdemeanor involving theft.

(4) The operator fails to furnish a current list of names, addresses, or other information as required by § 146.7;

(5) The operator does not provide a secure facility or properly safeguard merchandise within a zone;

(6) The operator fails to pay, within 30 days after the due date, all annual fees associated with the operation of a zone;

(7) The operator, or any officer, agent, or employee of the operator, discloses to an unauthorized person proprietary information contained on a Customs form or in the inventroy control and recordkeeping system; or

(8) The inventory control and recordkeeping system is impaired to the point where the identity of merchandise in zone status has been lost and cannot be reestablished without a suspension of zone operations.

(b) *Procedure.*

(1) *Notice.* The district director may, at any time, serve notice, writing, upon an operator to show cause why its right to continue operation of a zone should not be suspended or why an individual user or activities of an individual user should not be suspended, as provided for in paragraph (a) of this section. The notice will advise the operator of the grounds for the proposed action and will afford the operator an opportunity to respond, in writing, within 15 days after receipt of the notice. Thereafter, the district director shall consider the allegations and any response made by the operator and issue a decision, unless the operator requests a hearing in the matter.

(2) *Hearing.* If the operator requests a hearing, it will be held before a hearing officer designated by the Commissioner of Customs or his designee within 30 days following the operator's request. The operator may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding, including substantiation of the allegations and the response thereto, will be presented. The right of cross-examination will be available to both parties. A stenographic record of the proceeding will be made and a copy will be delivered to the operator. At the conclusion of the hearing, the hearing officer shall transmit promptly all papers and the stenographic record of the hearing to the regional commissioner of the region in which the zone is located, together with a recommendation for final action.

(3) *Decision of regional commissioner.* Within 10 calendar days after delivery to the operator of a copy of the stenographic record of the hearing, the operator may submit to the regional commissioner in writing any additional views or arguments. The regional commissioner shall then render a written decision stating his reasons therefor. That decision will be served on the operator and will be considered the final Customs administrative action in the case.

(4) *Grantee.* If the grantee of the zone is not the operator, a copy of the notice to show cause will be served upon the grantee. The grantee, as a party-in-interest, may join the operator in any proceeding under this section.

§ 146.83 Revocation of zone grant.

(a) *Recommendation of district director.* The district director may at any time recommend to the Board that the privilege of establishing, operating, and maintaining a zone or subzone under Customs jurisdiction be revoked for willful and repeated violations of the Act (19 U.S.C. 81r). If the district director believes that a substantial question of law exists as to whether willful and repeated violations of the Act have occurred, that officer may request internal advice under the provisions of Part 177 of this chapter from the Director, Carriers, Drawback and Bonds Division, Headquarters. A recommendation to the Board that a zone or subzone grant be revoked does not preclude, and may be in addition to, any liquidated damages, penalty, or suspension for cause.

(b) *Decision of the Board.* The procedure for revocation of a grant, the decision of the Board, and appeal is covered by the provisions of the Act and Title 15, Chapter IV, Part 400, Code of Federal Regulations.

CONFORMING AMENDMENTS

PARTS 18, 24, 112, 113, 141, 144, 178, AND 191

To conform the Customs Regulations to the changes made by the revision of Part 146, Customs Regulations (19 CFR Part 146), Parts 18, 24, 112, 113, 141, 144, 178, and 191, Customs Regulations (19 CFR Parts 18, 24, 112, 113, 141, 144, 178, and 191) are amended in the following manner:

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The authority citation for Part 18 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1551–1553, 1624.

2. Section 18.2 is amended in the following manner:

a. By revising the heading to paragraph (a)(1) to read "Merchandise other than from warehouse or foreign trade zone delivered to bonded carrier."

b. By removing the words "paragraph (a)(2)" in the first sentence of paragraph (a)(1) and inserting, in their place, the words "paragraphs (a)(2) and (a)(3) of this section."

c. By adding a new paragraph (a)(4) to read as follows:

§ 18.2 Receipt by carrier manifest.

(a) * * *

(4) *Merchandise delivered from foreign trade zone.* When merchandise is delivered from a foreign trade zone to a bonded carrier for transportation in bond, supervision of lading will be accomplished in accordance with the procedure set forth in § 146.71(a) of this chapter.

* * * * * * *

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The authority citation for Part 24 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624, 31 U.S.C. 9701.

2. Section 24.13 is amended by inserting in the first sentence of paragraphs (c) and (f), the words "a foreign trade zone operator," before the words "and bonded warehouse proprietor," respectively.

PART 112—CARRIERS, CARTMEN, AND LIGHTERMEN

1. The authority citation for Part 112 is revised to read as follows:

AUTHORITY: 19 U.S.C. 66, 1551, 1565, 1623, 1624.

2. All other statutory authority cited at the end of various sections in Part 112 is removed.

3. The last sentence of § 112.12(b)(3), is revised to read as follows:

§ 112.12 Application for authorization.

* * * * * * *

(b) *Special requirements.*

* * * * * * *

(3) *Private carriers.* * * * If the private carrier is the proprietor of one or more Customs bonded warehouses or bonded container stations, or the operator of a foreign trade zone, to which imported merchandise will be transported, he shall accompany the bond and copies of the bond by a statement showing the location of each warehouse, container station, or zone.

* * * * * * *

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1623, 1624.

2. Section 113.73 is amended by revising paragraphs (a)(1) and (a)(2), and by adding paragraph (d), to read as follows:

§ 113.73 Foreign trade zone operator bond conditions.

* * * * * * *

(a) *Receipt, Handling, and Disposition of Merchandise.* The principal agrees to comply with:

(1) The law and Customs Regulations relating to the receipt, admission, status, handling, transfer, and removal of merchandise from the foreign trade zone or subzone, and

(2) The Customs Regulations concerning the maintenance of inventory control and recordkeeping systems covering merchandise in the foreign trade zone or subzone. If the principal defaults and the default involves merchandise other than domestic merchandise for which no permit for admission is required, the obligors (principal and surety) agree to pay liquidated damages equal to the value of the merchandise involved in the default, or three times the value of the merchandise involved in the default if the merchandise is restricted merchandise or alcoholic beverages, or such other amount as may be authorized by law or regulation. It is understood and agreed that whether the default involves merchandise is a determination made by Customs, that the amount to be collected under this condition shall be based upon the quantity and value of the merchandise as determined by Customs, and that value as used in these provisions means value as determined under 19 U.S.C. 1401a. If the principal defaults and the default does not involve merchandise, the obligors agree to pay liquidated damages of $1000 for each default, or such other amount as may be authorized by law or regulations.

(b) * * *

(c) * * *

(d) *Payment of Annual Fee.* The principal agrees to pay timely any annual fee or fees as provided in the Customs Regulations. If the principal defaults, the obligors agree to pay liquidated damages equal to the amount of the annual fee due but not paid and an amount equal to one percent of the annual fee for each of the first seven days the annual fee is in arrears, two percent of the annual fee for each of the succeeding seven days the annual fee is in arrears, and three percent of the annual fee for each day thereafter in which the annual fee is in arrears.

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 continues to read as follows:

AUTHORITY: 19 U.S.C. 66, 1448, 1484, 1624.

2. Section 141.111(d) is revised to read as follows:

§ 141.111 Carrier's release order.

* * * * * * *

(d) *Qualified release order.* In the case of merchandise which is entered for warehousing, for transportation in bond, for exportation, or is to be admitted to a foreign trade zone, the release order may be qualified as follows:

(1) "For transfer to the bonded warehouse designated in the warehouse entry," if the merchandise is entered for warehousing;

(2) "For transfer to the bonded carrier designated in the transportation entry," if the merchandise is entered for transportation in bond;

(3) "For transfer to the carrier designated in the export entry," if the merchandise is entered for exportation; or

(4) "For transfer to the foreign trade zone designated in Customs Form 214," if the merchandise is to be admitted to a foreign trade zone.

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for Part 144 is revised to read as follows:

AUTHORITY: 5 U.S.C. 301, 7 U.S.C. 1854, 19 U.S.C. 66, 1311, 1312, 1484, 1552, 1553, 1555, 1556, 1557, 1559, 1562, 1563, 1623, 1624, 1646(a), 26 U.S.C. 5214; Pub. L. 95–410; Pub. L. 95–176; Pub. L. 96–511.

2. All other statutory authority cited at the end of various sections in Part 144 is removed.

3. Section 144.36(g) is revised to read as follows:

§ 144.36 Withdrawal for transportation.

* * * * * * *

(g) *Procedure at destination.* Upon arrival at destination, the merchandise may be:

(1) Entered for rewarehouse in accordance with § 144.41;

(2) Entered for combined rewarehouse and withdrawal for consumption in accordance with § 144.42;

(3) Exported in accordance with paragraph (h) of this section;

(4) Forwarded to another port or returned to the port of origin in accordance with § 18.5 (c) or (d) of this chapter; or

(5) Admitted to a foreign trade zone in zone-restricted status as provided in Part 146 of this chapter.

§ 144.37 Withdrawal for exportation.

* * * * * * *

4. Section 144.37 is amended by adding a new paragraph (g), to read as follows:

* * * * * * *

(g) *Exportation at a foreign trade zone.* Merchandise may be withdrawn for exportation at a foreign trade zone in the same or at a different port. The merchandise will be considered exported upon admission to a zone in zone-restricted status, as provided in § 146.44(c) of this chapter.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting the following in the appropriate numerical sequence according to the section number the colums indicated:

§ 178.2 Listing of OMB Control Numbers.

19 CFR Section	Description	OMB Control No.
146.6, 146.7	Procedures for activation of a foreign trade zone; procedures for zone changes, including alteration, deactivation and suspension.	1515–0151

PART 191—DRAWBACK

1. The authority citation for Part 191 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11), 1313, 1624.

§§ 191.163–191.165 also issued under 19 U.S.C. 81c.

2. Section 191.162 is amended by removing reference to "§ 146.25," and inserting, in its place, reference to "§ 146.44."

3. Section 191.163 (c) and (d) are revised to read as follows:

§ 191.163 Articles manufactured or produced in the U.S.

* * * * * * *

(c) *Action of the district director on the notice of transfer.* The district director shall assign a number to each notice of transfer, return one copy to the transferor and forward another copy to the zone operator at the foreign trade zone.

(d) *Action of foreign trade zone operator.* After articles have been received in the zone, the zone operator at the zone shall certify on a copy of the notice of transfer the receipt of the articles (see

§ 191.164(d)(2)) and forward the notice to the transferor or the person designated by the transferor. The transferor shall verify that the notice has been certified before filing it with the drawback entry.

* * * * * * *

4. Paragraphs (b) and (c) of § 191.164 are revised to read as follows:

§ 191.164 Merchandise transferred from continuous Customs custody.

* * * * * * *

(b) *Drawback entry.* Before the transfer of merchandise from continuous Customs custody to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director a direct export entry on Customs Form 7512 in duplicate. The district director shall forward one copy of Customs Form 7512 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7512 the receipt of the merchandise (see paragraph (d)(2) of this section) and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs Form 7512 to the district director in place of the bill of lading required by § 191.136.

* * * * * * *

5. Paragraphs (b) and (c) of § 191.165 are revised to read as follows:

§ 191.165 Same condition drawback merchandise and merchandise not conforming to sample or specifications or shipped without the consent of the consignee.

* * * * * * *

(d) *Drawback entry.* Before transfer of the merchandise to a foreign trade zone, the importer or a person designated in writing by the importer for that purpose shall file with the district director an entry on Customs Form 7539 in duplicate. The district director shall forward one copy of Customs Form 7539 to the zone operator at the zone.

(c) *Certification by zone operator.* After the merchandise has been received in the zone, the zone operator at the zone shall certify on the copy of Customs Form 7539 the receipt of the merchandise and forward the form to the transferor or the person designated by the transferor. After executing the certifications provided for in paragraph (d)(3) of this section, the transferor shall resubmit Customs

Form 7539 to the district director in place of the bill of lading required by § 191.136.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: December 10, 1985.
DAVID D. QUEEN,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, February 11, 1986 (51 FR 5040)]

PARALLEL REFERENCE TABLE

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.0	146.0.
146.1(a)	New.
146.1(b) (2), (3), (4), (6), (7), (8), (12), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23).	New.
146.1(b)(1)	146.1(a).
146.1(b)(5)	146.1(c).
146.1(b)(9)	146.1(e).
146.1(b)(10)	146.1(e)(1).
146.1(b)(11)	146.1(e)(2).
146.2	146.2.
146.3(a)	146.3.
146.3(b)	New.
146.4	New.
146.5	146.4.
146.6	New.
146.7	New.
146.8	New.
146.9	146.5.
146.10	146.6.
146.11 (a), (b), and (c)	146.7 (a), (b), and (c).
146.11(d)	New.
146.12	146.8.
146.13	New.
146.14	New.
146.21	New.
146.22	New.
146.23	New.
146.24	New.
146.25	New.
146.26	New.
146.31	146.11.
146.32(a)	146.12(a).
146.32(b)(1)	New.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.32(b)(2)	146.12(b)(1)(ii).
146.32(b)(3)	146.12(b)(1)(i).
146.32(b)(4)	146.12(b)(2).
146.32(b)(5)	New.
146.32(c) (1), (2), and (4)	146.12(c) (1), (2), and (3).
146.32(c)(3)	New.
146.32(d)	New.
146.33	146.13.
146.34	146.14.
146.35	New.
146.36	New.
146.37	New.
146.38	146.15.
146.39	New.
146.40	New.
146.41 (a), (b), and (c)	146.21 (a), (b), and (c) (1) and (2).
146.41(d)	146.21(c)(3) (i) and (v).
146.41(e)	146.21(d).
146.42	146.23.
146.43	146.22, 146.24.
146.44	146.25.
146.51	146.31 (a), (b).
146.52(a)	146.21(f), 146.32(a), 146.33(a).
146.52(b)	146.21(f), 146.32(b), 146.33(b).
146.52(c)	146.32(c).
146.52(d)(1)	New.
146.52(d)(2)	146.32(d).
146.52(e)	146.33(b).
146.53 (a), (b)	146.31(c).
146.53 (c), (d), and (e)	New.
146.61	146.47(c), 146.48(b).
146.62	New.
146.63(a)	146.45, 146.46, 146.48(c).
146.63(b)	146.47.
146.63(c)	New.
146.63(d)	146.49.
146.64(a)	146.48(c).
146.64(b)	146.47(e)(4).
146.64 (c), (d)	New.
146.65(a)(1)	146.21(c)(3)(iv).
146.65(a)(2)	146.48(e)(1).
146.65(b)	146.48(e)(2).
146.65(c)	New.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Revised section	Superseded section
146.66(a)	146.43(b)(1).
146.66(b)	146.43(b)(1).
146.66(c)	146.43(b)(2).
146.66(d)	New.
146.67(a)	146.41.
146.67 (b), (c)	146.45(d), 146.46(d).
146.67(d)	New.
146.67(e)	146.46(e).
146.68	New.
146.69	146.42.
146.70(a)	146.47(a).
146.70(b)	146.47(e)(3).
146.70(c)	146.47(e)(4).
146.70(d)	146.47(e)(3).
146.71	New.
146.81	New.
146.82	New.
146.83	New.

Old section	New section
146.0	146.0.
146.1(a)	146.1(b)(1).
146.1(b)	Removed.
146.1(c)	146.1(b)(5).
146.1(d)	Removed.
146.1(e)	146.1(b)(9).
146.1(e)(1)	146.1(b)(10).
146.1(e)(2)	146.1(b)(11).
146.1(f)	Removed.
146.2	146.2.
146.3	146.3(a).
146.4	146.5.
146.5	146.9.
146.6	146.10.
146.7 (a), (b), and (c)	146.11 (a), (b), and (c).
146.8	146.12.
146.11	146.31.
146.12(a)	146.32(a).
146.12(b)(1)(i)	146.32(b)(3).
146.12(b)(1)(ii)	146.32(b)(2).
146.12(b)(2)	146.32(b)(4).
146.12(c) (1), (2), and (3)	146.32(c) (1), (2), and (4).
146.13	146.33.
146.14	146.34.

PARALLEL REFERENCE TABLE—Continued

[This table shows the relationship of sections in revised Part 146 to superseded Part 146]

Old section	New section
146.15	146.38.
146.21 (a), (b), and (c)(1)(2)	146.41 (a), (b), and (c).
146.21(c)(3) (i) and (v)	146.41(d); 146.65(a)(1).
146.21(c)(3)(iv)	146.65(a)(1).
146.21(c)(3) (ii) and (iii)	Removed.
146.21(d)	146.41(e).
146.21(e)	Removed.
146.21(f)	146.52 (a) and (b).
146.22	146.43.
146.23	146.42.
146.24	146.43.
146.25	146.44.
146.31 (a) and (b)	146.51.
146.31(c)	146.53 (a), (b).
146.32(a)	146.52(a).
146.32(b)	146.52(b).
146.32(c)	146.52(c).
146.32(d)	146.52(d)(2).
146.33(a)	146.52(a).
146.33(b)	146.52(b).
146.41	146.67(a).
146.42	146.69.
146.43(a)	Removed.
146.43(b)(1)	146.66(b).
146.43(b)(2)	146.66(c).
146.44	Removed.
146.45 (a), (b), and (c)	146.63.
146.45(d)	146.67 (b), (c).
146.46 (a), (b), and (c)	146.63.
146.46(d)	146.67 (b), (c).
146.46(e)	146.67(e).
146.47(a)	146.70(a).
146.47 (b), (d), and (e) (1) and (2)	Removed.
146.47(c)	146.61.
146.47(e)(3)	146.70 (b) and (d).
146.47(e)(4)	146.64, 146.70(c).
146.47(f)	Removed.
146.48(a)	Removed.
146.48(b)	146.61.
146.48(c)	146.63(a) and 146.64(a).
146.48(d)	Removed.
146.48(e)(1)	146.65(a)(2).
146.48(e)(2)	146.65(b).
146.48(f)	Removed.
146.49	146.63(d).

APPENDIX

FINAL REGULATORY FLEXIBILITY ANALYSIS ON PROPOSED CUSTOMS REGULATIONS AMENDMENTS RELATING TO FOREIGN TRADE ZONES

INTRODUCTION

The economic impact review below constitutes the Customs Service final regulatory flexibility analysis in compliance with the requirements of Section 3 of the Regulatory Flexibility Act (5 U.S.C. 603). The Act requires that regulatory effects be analyzed so as to determine and quantify, if possible, the economic effects of proposals on small business operations. The Act's key concepts revolve around identifying "significant economic impacts on a substantial number of small entities." The initial analysis was modified as necessary into a final regulatory flexibility analysis upon receipt and review of public comments resulting from Federal Register publication of this rule as a notice of proposed rulemaking.

RATIONAL

The number of Foreign Trade Zones, complexity of operations and volume of trade passing through zones has increased significantly in recent years. From less than 20 zones in the early 1970's, activated zones and sub-zones reporting activity at the end of 1984 numbered 88 (57 general purpose zones and 31 subzones), with 83 other zones approved but not reporting activity (see table 1).

Meanwhile, Customs inspection and supervision of zone activity has changed little in practice. Secular reductions in agency resources have combined with unchanged practices to produce (1) operational hardships on zone grantees and users and (2) uncertain inspection and control of zone activity.

The proposed revisions to 19 CFR Parts 18, 24, 112, 141, 144, 146, and 191 (relating to Customs administration of foreign trade zones) is an administrative attempt to update zone supervision in accordance with current business practices.

OBJECTIVES

The proposal is intended to bring about three fundamental changes:

1. The method of accountability of merchandise admitted, stored, manipulated, exhibited, manufactured and removed from zones;

2. The method of enforcement of Customs laws through audits and spot checks instead of more costly physical presence of inspectional resources; and
3. The method of reimbursing Customs for its zone-related operational expenses.

Legal Basis for Proposal

This regulatory project is initiated under the authority of R.S. 251, as amended, Sections 1-21, 48 Stat. 998, 999, as amended, 1000, 1002, as amended, 1003, 77A Stat. 14, Section 624, 46 Stat. 759 (19 U.S.C. 66, 81a-81u, 1202 (General Headnote 11), 1924).

Estimated Number of Small Entities Affected

Tallies of zone activity in Customs regions indicated that approximately 1,500 users occupy space in zones and carry out the range of permitted manipulation manufacturing and storage activities. Of these, 600 operate on a full-time, year-round basis. The remaining 900 operate on a part-time basis. These estimates do not include users in foreign trade sub-zones. Sub-zone users tend to be large (oftentimes multinational) corporations and thus do not fit within the purview of the requirements of the Regulatory Flexibility Act which concentrate on small business concerns.

Economic Effects of Compliance With the Proposal

After review of the proposal's work plan, we have identified within the proposal the following seven procedural/administrative and fee-related changes likely to affect economic concerns of small business:

A. Procedural administrative changes:
1. Inventory control and record keeping system;
2. Operator's control over admission and removal of goods;
3. Elimination of customs forms 7502/7505/215.

B. Fee changes:
1. Elimination of present form of reimbursement to Customs;
2. Implementation of an annual fee covering audits and spot checks;
3. Zone activation an boundary alteration fee.

TABLE I.—NUMBER OF FOREIGN TRADE ZONES IN THE UNITED STATES [1]

	Approved	Reporting Activity	No Reported Activity
Total	171	88	83
General Purpose Zones	111	57	54
Sub-zones	60	31	29

[1] As of the end of FY 1984.

Source: Foreign Trades Zones Board, U.S. Department of Commerce and special reports from U.S. Customs Service Regions.

A. *Procedural/Administrative Changes*

—Inventory Control and Record Keeping System

An inventory control and record keeping system with Customs prescribed data will result from this proposal. A similar system (Alternative Inventory Control System) has been in effect since 1976 and currently operates at 7 general purpose zones. Data required for the new system will consist of standard business data currently collected and tabulated for small users by each zone's operator/grantee. We do not anticipate a significant net reporting burden on users or operators as a result of this segment of the proposal.

—Operators' Control Over Admission and Removal of Goods

Under present Customs supervision, a Customs officer must be present to clear admissions of merchandise to and removals of merchandise from a zone, thus limiting these transactions to the availability of a Customs officer. Under the present proposal, an operator will be able to admit and remove merchandise without a Customs officer being present, after receiving Customs approval. However, Customs approval for admission will require an invoice in support of the application for admission on CF 214 and that the merchandise be retained for Customs examination at the place of unlading, the zone, or other location designated by the district director. Upon admittance to a zone, textile goods subject to visa controls will require a CF 214 with an invoice annotated by a Customs officer. Withdrawal of those goods will require the visa, either the original if withdrawn in its original lot size or new visas if withdrawn in break bulk, partial quantities. Presentation of an invoice and merchandise examination prior to admission are not currently required and will represent an additional paperwork requirement and possible delay in the arrival of merchandise at the zone. Customs approval for removals will be simplified by a reduction in paperwork as outlined in the next section. In total, the additional admission requirements will be offset by the simplified removal procedure and the enhanced business flexibility derived from being able to admit or remove merchandise freely into and out of the zone after Customs approval has been received.

—Forms Reduction—Customs Forms 7501/7505/215

Under present practice, Customs forms 7501 and 214 are required to obtain privileged foreign status. Removal of privileged foreign status merchandise from a zone requires filing CF 7505 for consumption. CF 215 is required to remove all zone status merchandise, except merchandise in privileged status or wholly composed of merchandise in privileged status. The estimated number of forms filed in FY 1984 appear in Table 2 below.

Table 2

Form		
*7501	.....	15,000
7505	.....	20,000
215	.....	45,000

* The present CF 7501 requires data previously requested on the CF 7502.

Under a provision of this proposal, a request for privileged foreign status would require a CF 214 and invoice (as before) but would eliminate the CF 7501. Upon removal of privileged foreign status goods from a zone, the applicable entry form would replace the 7505 (no net gain or loss). Further, the CF 215 will be eliminated under this proposal. Current clerical, data base management and brokerage costs for an estimated 60,000 forms 7501/215 would be eliminated, giving small businesses a net gain on the order of $650,000 yearly from this procedural change.

—Mandatory Bonding

One of the major proposed changes in zone administration is to involve the operator/grantee in data keeping and reporting. A new mandatory bond at a minimum level of $50,000 would be required in another provision of the proposal, with the goal of encouraging operator/grantee accuracy in compliance with his new responsibilities. The new bond would cover non-compliance with these proposed regulations as well as losses of merchandise. In terms of practical effects of this provision on small businesses, we anticipate no net appreciable added burden or cost. Most activated zones currently have bonds which meet or exceed the proposed minimum level.

B. *Fee Changes*

—Elimination of Present Forms of Customs Reimbursement

Under present practices, operators/grantees reimburse Customs for inspectional services rendered at zones. In fiscal year 1984, payments to Customs totaled an estimated $1.7 million, of which $1.3 million pertain to operations at general purpose zones. Assuming operators charge users flat fees to recover these payments, then

each small user pays an average of $870 per year for these present Customs services. The proposed revisons would *eliminate* this $1.3 million present fee, substituting in its place (see below) tiered fees which would cover Customs costs in carrying out audits and spot checks.

A particular concern is underscored at this point, concerning the distribution of this $1.3 million benefit (eliminated Customs reimbursement). The 57 general purpose zones at the end of FY 1984 are widely distributed around the country. A small business interested in participating in a foreign trade zone generally finds itself limited to one and only one zone provider in its operating area. The offering of foreign trade zone services could thus be regarded as a monopolistic market condition. Significant regulatory requirements and administrative and application costs in seeking approval and setting up a zone essentially prevents access by (especially small) businesses. In essence, then, they must generally contract with the sole established zone operator in the geographic area.

In economic theory, the pricing practices of a good/service provided under monopolistic conditions are oriented towards extracting a maximum profit for the unique provider, and, in practice, the level of fees charged by some zone operators/grantees is a known concern of the Commerce Department's Foreign Trade Zone Board.

As stated above, average savings per user from elimination of Customs reimbursement is expected to approximate $870 per year. Based on actual trade zone market conditions, however, real actual savings to users may total well below the average $870/year. We expect that zone operator/grantees will pass through to small users only a portion (quite possible small) of the total $1.3 estimated benefit of this provision of the proposed regulation. In the public comments, no commenters (largely major general purpose and sub-zone operators) addressed this issue. We expect that in most cases operators will neglect to pass on savings to small users. The Foreign Trade Zone Board has authority to review fees and charges to users if those fees are challenged as unreasonable.

The fiscal year 1984-based fee schedule is tiered. The purpose of the annual fee is to recover Customs costs incurred in carrying out the audit-inspection supervision program. The annual fee to be charged each zone is a function of the degree of complexity in Customs auditing and inspection of zones. In order to account for those distinct operating conditions, each zone with fall into a distinct size/complexity tier, with a specific fee for each tier. In this way, small, less operationally complex zones will not subsidize large zones. The tiers are based on operational complexity as measured by the number of admissions and removals of foreign and zone restricted merchandise.

A zone will be classified as to its fee tier according to the following simple criteria if admissions/transfers of foreign and zone restricted merchandise:

(i) Are less than 300 per year, then TIER I ($1,400 per year fee);
(ii) Fall between 300 and 3,000 per year, then TIER II ($15,500 per year fee);
(iii) Are greater than 3,000 per year, then TIER III ($33,800 per year fee).

We expect general purpose zones to be largely skewed towards the TIER I level (see Table 3).

The annual fee is due and payable on the effective date of final Rule and on January 1 of each subsequent year. For existing zones the tier will be based on the number of admissions and transfers of foreign and zone restricted merchandise made during fiscal year ending September 30, 1984. Zones currently under a voluntary audit-inspection agreement need not pay an additional annual fee for calendar year 1985, nor will there be any refunds of fees paid. For subsequent years the tier will be based on the number of admissions and transfers of foreign and zone restricted merchandise made during the previous fiscal year ending September 30. Each zone operator is responsible for determining the appropriate tier. The operator's determination is subject to Customs verification. Operators of zones activated during a calendar year will be responsible for paying an annual fee based on tier I.

TABLE 3.—DISTRIBUTION OF FOREIGN TRADE ZONES BY ANNUAL FEE TIERS

	Tier I [1]	Tier II [2]	Tier III [3]	Small Business Users
Total	44	33	11	1,500
General Purpose Zones	30	18	8	1,300
Sub-zones	14	15	3	200

[1] $1,400 fee per year.
[2] $15,500 fee per year.
[3] $33,800 fee per year.

Under the present inspectional system Customs bills general purpose zone operators approximately $1.3 million annually for inspectional services. Zone operators recover this expense in their fee and rental/lease billings to zone users. As above, we estimate that the Customs component of these fees paid by zone users average $870 per year per user.

Under the proposed audit-inspection system with different fee tiers, Customs billings to general purpose operators will amount to approximately $591,000 per year, versus the estimated $1.3 million at present. The Customs component of small business users' payments to operators will average $450 per year per user, versus the

$870 per year per user at present. Future increases in the annual fee will reflect cost increases incurred by Customs in delivering audit and inspection services. These increases will consist largely of annual rises in labor costs. It is expected that labor costs, and thus annual fees charged zone operators, will rise by a moderate 2–4% per year.

Since sub-zone users are generally large companies, the effects of fees on them do not fall within the purview of the RFA and this analysis and thus will not be considered in this economic review. The burden on small business from this fee schedule (yielding $591,000/yr.) would be an average $450 per small user. Elimination of the current reimbursement method ($870 per small user annually), even under the caveats noted above, would more than cover these new audit-inspection approach fees.

—New Zone Activation and Boundary Alteration Fees

Under present procedures, zone applicants are not billed for necessary Customs preparatory work prior to a zone's activation or alteration. The proposed revisions contain a provision allowing Customs to recover its costs for such tasks, among others, as site surveys, background investigations, zone approval processing, inventory systems review and associated clerical costs. These fees would be applicable to zones which are activated, relocated or altered on or after the effective date of final rulemaking.

Prospective fees are currently estimated at the following:

(a) $1,021 for zone activation;

(b) $442 for zone relocation; and

(c) $442 for zone alterations.

Concerning effects on small businesses, we expect average added cost pass-through from this source to be insignificant.

Overlapping Rules

None identifiable.

Alternative Rules

None feasible. The *Status Quo* becomes more untenable as complex zone manufacturing operations increase in number, while Customs resources diminish.

Summary of Economic Effects

Based on present available data, the proposed revisions would appear to provide net yearly benefits to zone operators and users of $1.3 million, as summarized below:

Quantified Cost (−)/Benefits (+)

[In dollars]

Document Reduction	+650,000
Current Reimbursement Eliminated	+1,300,000
New Annual Fees for Audit Approach	−591,000
Total	+1,359,000

Non-Quantified Factors

	Added Costs	New Benefits	Neutral Effect
Admission of goods	X		
Removal of goods		X	
Inventory control and record keeping system.			X
Mandatory bonding			X

(T.D. 86-17)

Leaded Naphtha; Change of Tariff Classification

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change of practice.

SUMMARY: Customs has determined that a uniform and established practice exists to classify certain imported leaded naphtha for tariff purposes as motor fuel. Because this petroleum product, as imported, is not chiefly used as motor fuel, it cannot be classified as such, nor can it be classified as naphtha in view of the added lead content. Accordingly, Customs believes the classification practice is clearly wrong. The most appropriate tariff provision for the classification of leaded naphtha is for mixtures not specifically provided for, i.e., mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas.

EFFECTIVE DATE: This change of practice will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after May 8, 1986.

FOR FURTHER INFORMATION CONTACT: John G. Hurley, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. (202-566-8181).

SUPPLEMENTARY INFORMATION:

BACKGROUND

In Treasury Decision 83-173, dated August 17, 1983, and published in the Customs Bulletin of September 7, 1983, new standards were established to aid Customs in classifying petroleum products which are chiefly used as motor fuels under the provision for motor fuel in item 475.25, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). It was further stated in T.D. 83-173 that classification under item 475.25, TSUS, would be indicated if the imported petroleum product met the current American Society for Testing and Materials (ASTM) standards set out in D439 for automotive gasoline, D1655 for aviation turbine fuels, or D910 for aviation gasoline.

T.D. 83-173 revoked T.D. 66-23(13) dated Janaury 19, 1966, which set out critical properties for petroleum products chiefly used as motor fuels at that time. Although this guide was widely used both by Customs and importers for the classification of products claimed to be motor fuel, it had long been recognized that the standards set out in T.D. 66-23(13) were outmoded and required updating. Nonetheless, it should be noted that T.D. 66-23(13) itself stated that the critical properties listed were to be used only as a guide and that it was intended that to be classified as a motor fuel, a product should meet the requirements of Headnote 2(b), Part 10, Schedule 4, TSUS.

Despite this requirement, which has been recognized by the court in *United States* v. *Exxon Corp.*, 607 F.2d 985 (1979), C.A.D. 1233, Customs found that reliance has been placed on T.D. 66-23(13) to establish whether a particular petroleum importation was classified as motor fuel in item 475.25, TSUS. In view of the change in the critical properties of gasoline in the intervening years, as necessitated by the higher performance engines developed, the standards for automotive fuel as stated in T.D. 66-23(13) are no longer valid. Petroleum products which meet the criteria set out in T.D. 66-23(13) cannot be said to be chiefly used as motor fuel, as imported.

Customs has learned that petroleum products entered as motor fuel and which met the standards of T.D. 66-23(13) generally were not intended to be used as gasoline, as imported, but were used as blending stock; that is, they were products which were made into finished gasoline subsequent to importation. The gasoline blending industry imports hydrocarbon distillate mixtures, such as low octane, off specification motor gasoline, petroleum naphtha, leaded naphtha and similar products for the purpose of blending them into a final product which meets the requirements of modern gasoline engines.

A review of entries made over the past few years shows that, based on liquidations, an uniform and established practice exists to classify gasoline blendstock, particularly leaded naphtha, which

meets the criteria set out in T.D. 66-23(13), as motor fuel in item 475.25, TSUS.

On the basis of the above information, Customs determined that the established and uniform practice of classifying leaded naphtha, which met the criteria set out in T.D 66-23(13), as motor fuel in item 475.25 TSUS, is clearly wrong. Leaded naphtha cannot be classified as naphtha in item 475.35, TSUS, in view of the added lead content.

Accordingly, Customs published a notice in the Federal Register on February 27, 1985 (50 FR 7929), soliciting public comments on the proposed change of practice and stating the most appropriate provision for classification is that for mixtures not specially provided for, i.e., mixtures that are in whole or in part of hydrocarbons derived in whole or in part from petroleum, shale oil, or natural gas, in item 432.10, TSUS. The current rate of duty for articles classified under item 432.10, TSUS, is 5 percent ad valorem, but not less than the highest rate applicable to any component material. The component material with the highest duty rate would be tetraethyl lead in item 429.70, TSUS, with a current duty rate of 9.8 percent ad valorem.

The notice stated that it pertained to certain leaded naphtha only and not to petroleum naphtha classifiable in item 475.35, TSUS, or catalytic naphtha containing by weight over 5 percent synthetically produced dutiable benzenoids, classifiable as a benzenoid mixture in item 407.16, TSUS.

Discussion of Comments

Of the 17 comments received in response to the notice, some believed that the practice to classify such blendstock as motor fuel in item 475.25, TSUS, was correct and others believed that it was wrong. Those who believed that the practice was wrong agreed with the Customs view that the various blendstock materials should be classified according to composition if they did not meet motor fuel standards. Leaded naphtha which failed to meet current commercial gasoline standards would be classifiable as a mixture in item 432.10, TSUS, dutiable at the rate for tetraethyl lead in item 429.70, TSUS, of 9.8 percent ad valorem. If the imported material contained over 5 percent dutiable benzenoids it would be classifiable as a benzenoid mixture in item 407.16, TSUS. Reformate and catalytic naphtha containing over 5 percent dutiable benzenoids (whether or not containing tetraethyl lead) would be classifiable as a benzenoid mixture in item 407.16, TSUS, dutiable at the rate for alkylbenzenes in item 402.36, TSUS, of 0.8 cent per pound plus 17.3 percent ad valorem.

Various arguments were made in opposition to any change in the classification of blendstock materials as motor fuel. One argument was that such products were "unfinished gasoline" not required to be a finished product; that they were dedicated to use as a motor

fuel. An example given was the Mexican product which was sold commercially in Mexico as a motor fuel and could be used, it was claimed, as a motor fuel in this country. However, even though it was acknowledged that it did not meet commercial U.S. standards, it was claimed such a petroleum product was of a "class or kind" that was chiefly used as motor fuel, as it contained the general physical characteristics of motor fuel.

Several court decisions were listed to support the position that the imported blendstock was of a class or kind of petroleum material to be classifed as motor fuel. Considerable reliance was placed on *Cities Service Oil Co.* v. *United States,* C.D. 994 (1946). There the court stated that an oil which did not meet the specifications for oil commonly and commercially used as fuel oil but was used as such after heating, was of a class or kind chiefly used for fuel. The court noted that while the oil product exceeded the highest viscosity rating of standard grades, the evidence was that large consumers of fuel oils use these high viscosity oils. If there is only one practical use for merchandise of this type, it seems obvious, stated the court, that it must be the chief use. In *California Oil Co.* v. *United States,* C.D. 1442 (1952), the court noted that a blending component used in gasoline but not suited for use as motor fuel was not chiefly used as motor fuel. An early Customs decision on this issue, T.D. 46069 (1932), ruled that a petroleum naphtha was taxable as a motor fuel only if in its condition as imported it was of a grade which was chiefly used in the U.S. as a motor fuel.

As pointed out in *United States* v. *Exxon Corporation, Chevron Oil Co.,* C.A.D. 1233 (1979), Congress added a definition of the term "motor fuel" to the tariff. Under Headnote 2(b), Part 10, Schedule 4, TSUS, a product, stated the court, must be chiefly used as a motor fuel to be classified as such. Because the product in issue was unsuitable for use as motor fuel, it could not be classifiable as such.

The basic argument against changing the practice is that a petroleum product which is used as a motor fuel after only a minor amount of processing is of the same "class or kind" and therefore should be classified as a motor fuel.

Customs is of the opinion that if item 475.25, TSUS, was an "eo nomine" provision, the claim that the imported gasoline blendstock is an unfinished gasoline would have some merit. However, motor fuel is defined by Headnote 2(b), Part 10, Schedule 4, TSUS, and this limits motor fuel to a petroleum product chiefly used or imported as a motor fuel. This qualification only permits finished gasoline to be classified as motor fuel. As blendstock is not a finished gasoline, it would not be classified in item 475.25, TSUS.

T.D. 66–23(13) listed critical properties for petroleum products used as motor fuel about 20 years ago. During the intervening years the standards have changed and the specifications published then are no longer applicable. The Research and Motor Octane

numbers for leaded gasoline, for example, gradually increased from the 1930's to the early 1960's and have generally levelled off since then—*e.g.*, the average Research Octane number in 1942 was about 77, while in the 1980's the average is about 93. The lead requirements for motor fuels have changed over the years and the distillation characteristics have varied within limits.

In *Amorient Petroleum Co.*, v. *United States*, Slip Op. 85–46 (1985), "the statutory definition of motor fuel contained in Schedule 4, Part 10, Headnote 2(b), determines what is or what is not a motor fuel," the court stated, adding that since the chief use of the petroleum product in issue was as a motor fuel, the fact that in one area it could not be so used, but had to be further blended before it could be used as a finished gasoline, did not change the classification. "The fact that plaintiff intended to, and later did, blend some of the imported petroleum derivatives with other materials is irrelevant if the chief use in the United States of the imported merchandise at the time of importation was a motor fuel." Thus, even though the petroleum derivative may not be a motor fuel in a particular area, if it is chiefly used as such in the rest of the country, its status in a particular locale is not determinative, as it is of a "class or kind" chiefly used as motor fuel.

As to the question of naphtha, it is urged that naphtha regardless of origin, since it is a blendstock, be considered a petroleum product for tariff purposes and classifiable in item 475.35, TSUS, as petroleum naphtha. Headnote 1, Part 10, Schedule 4, TSUS, made allowances for the benzenoid content only in motor fuels, fuel oils and lubricating oils and greases. No exception is made for naphtha. Therefore, a catalytic naphtha or reformate, with over a *de minimis* amount of dutiable benzenoids present, which is not chiefly used as motor fuel could only be classifiable as a benzenoid mixture and not a petroleum naphtha.

Change of Practice

After careful analysis of the comments and further review of the matter, it is concluded on the basis of the entire record, that the practice of classifying leaded naphtha or any other type of gasoline blendstock as motor fuel is clearly wrong and should be changed. Under Headnote 2(b), Part 10, Schedule 4, TSUS, only those petroleum derivative products which are chiefly used as motor fuel as imported are classifiable as motor fuel in item 475.25, TSUS. Those petroleum products which are not chiefly used as motor fuel as imported but are considered blendstocks are classifiable according to composition. Leaded naphtha is classifiable as a mixture in item 432.10, TSUS, with the rate of duty for tetraethyl lead in item 429.70, TSUS; catalytic naphtha or reformate with over 5 percent dutiable benzenoids present is classifiable as a benzenoid mixture in item 407.16, TSUS, dutiable at the rate of alkylbenzenes in item 402.36, TSUS.

AUTHORITY

This change is being made under the authority of § 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

DRAFTING INFORMATION

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: November 12, 1985.
DAVID D. QUEEN,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, February 7, 1986 (51 FR 4839)]

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19 CFR Part 178

(T.D. 86-18)

Customs Regulations Amendment to Listing of OMB Control Numbers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include the clearance number issued by the Office of Management and Budget (OMB), necessary for certain information collection requirements included in a recent interim amendment to the Customs air commerce regulations. The interim amendment stated that an application for clearance was submitted to OMB. That office has since approved the regulation an issued the clearance number which appears later in this document.

EFFECTIVE DATE: March 5, 1986.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton, Regulations Control and Disclosure Law Divison, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 6, Customs Regulations (19 CFR Part 6), was amended on an interim basis by T.D. 86–12, published in the Federal Register on February 3, 1986 (51 FR 4161). The amendment created a new § 6.12a, Customs Regulations (19 CFR 6.12a), to enhance security in certain designated areas of international airports in the U.S. The major thrust of the regulation is to define a "Customs security area" which may only be entered by airport personnel wearing a Customs approved and issued identification strip or seal on an existing airport identification card. A strip or seal is issued only after an airport employer attests, in writing, that a background check has been conducted on an employee seeking access including, at a minimum, references and employment history necessary to verify employee representations regarding employment in the preceeding five years. Thus, the regulations place upon the employer the burden of conducting an investigation and making a written submission to Customs concerning that investigation.

The Paperwork Reduction Act of 1980 (Pub. L. 96–511, 94 Stat. 2812, 44 U.S.C. 3501 *et seq.*) established policies and procedures for controlling paperwork burdens imposed on the public by federal agencies. Pursuant to this Act, by a document published in the Federal Register on March 31, 1983 (48 FR 13666), the Office of Management and Budget (OMB) promulgated rules implementing the Act. The OMB rules are codified at 5 CFR Part 1320 *et seq.*

One aspect of OMB's oversight function is the review and approval of information collections. Generally, information collections include any requirement or request for persons to obtain, maintain, retain, report, or publicly disclose information. OMB analyzes such requests for three basic requirements. First, the collection of information must be necessary for proper performance of the agency functions. Second, the request for information or records must not duplicate information otherwise accessible to the agency. Third, the information must have practical utility.

When an information collection is approved by OMB, it is issued a control number. The control number provides a simple and effective way to inform the public that a particular information collection has been approved by OMB pursuant to the Paperwork Reduction Act.

In the February 3, 1986, interim regulation, Customs stated that the amendment was subject to the Paperwork Reduction Act, and that an application for approval was submitted to OMB. OMB was able to quickly review the information collection requirements included in T.D. 86–12, and has issued a control number. This document amends the Customs Regulations by including that control number in the list of previously issued numbers for Part 6, Customs Regulations (19 CFR Part 6), which appears in Part 178, Customs Regulations (19 CFR Part 178).

E.O. 12291, Regulatory Flexibility Act, Inapplicability of Public Notice Requirement

This document merely amends listing of the status of other already published regulations. Therefore, the requirements of E.O. 12291, the Regulatory Flexibility Act, and the notice and public comment requirements of the Administrative Procedure Act (5 U.S.C. 552) are not applicable.

List of Subjects in 19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collections of information.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However personnel from other Customs offices participated in its development.

Amendment to the Regulations

Part 178, Customs Regulations, (19 CFR Part 178), is amended as set forth below:

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by inserting, in proper numerical order, the following entry:

§ 178.2 Listing of OMB Control Numbers.

* * * * * * *

19 CFR Section	Description	OMB
§ 6.12a.....	Customs security areas in international airports.	1515–0152

Dated: February 4, 1986.

B. James Fritz,
Director, Regulations Control, and Disclosure Law Division.

[Published in the Federal Register, February 7, 1986 (51 FR 4721)]

U.S. Customs Service

Proposed Rulemaking

19 CFR Part 12

Proposed Customs Regulations Amendments Relating to Importation of Motor Vehicles and Boats by Employees of Public International Organizations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: Currently, the members of the Secretariat of a public international organization are exempted from compliance with federal emission standards, motor vehicle safety standards, and boat safety standards when importing a motor vehicle, boat, or related piece of equipment into the U.S. More than 15,000 staff personnel of such organizations are eligible to make nonconforming importations and the State Department has determined that the number of exemptions has extended well beyond the intended limits of the program.

Along with the problem associated with the number of people making such nonconforming importations, continuation of the exemption program would allow for the continued unjustified introduction into the U.S. of motor vehicles and boats which injure the public health and pose an unnecessary risk to the public safety.

The State Department has informed Customs that the exemption is not required by international law and is no longer warranted. Therefore, this document proposes to remove the exemption available to public international organization employees. In the rare instance when some international agreement might require such a privilege being granted, or to accommodate special circumstances, the proposal allows the State Department to designate certain individuals who would be granted the privilege of making nonconforming importations.

The document invites written comments on the proposal for consideration before final regulations are prepared.

DATE: Comments must be received on or before April 8, 1986.

ADDRESS: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Room 2426,

U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: William Burns, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8651).

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Customs Service, in the discharge of its duties, is often called upon to help enforce some 400 statutory and regulatory requirements on behalf of approximately 40 other Federal agencies. Three such instances are the cooperative efforts of Customs and the Environmental Protection Agency, the National Highway Traffic Safety Administration, and the Coast Guard, respectively, in enforcing regulations pertaining to the importation of motor vehicles, motor vehicle engines, boats, and related equipment. The specific regulations involved are § 12.73, Customs Regulations (19 CFR 12.73), concerning emission standards for imported motor vehicles and engines, § 12.80, Customs Regulations (19 CFR 12.80), concerning safety standards for imported motor vehicles, and § 12.85, Customs Regulations (19 CFR 12.85), concerning safety standards for imported boats.

In all three of these regulations, there are examples of certain types of importations which will be exempted from compliance with the applicable emission or safety standard. Common to all three is the exemption available to members of the Secretariat of a public international organization. The exemptions appear at §§ 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5), Customs Regulations (19 CFR 12.73(b)(5)(iv), 12.80(b)(1)(vi), and 12.85(c)(5)). More precisely, the exemption is available to a member of the Secretariat of a public international organization, so designated pursuant to the International Organizations Immunities Act (22 U.S.C. 288), on assignment in the U.S. A list of these organizations is included in § 148.87, Customs Regulations (19 CFR 148.87).

The International Organizations Immunities Act (the IOIA) was passed in 1945 to bring some standardization to the conduct of affairs with public international organizations. The U.S. had been dealing directly with other governments for a very long time, and diplomatic law was fairly well established. However, the U.S. was dealing with other countries through the medium of public international organizations with increasing frequency at this time. The IOIA was the U.S. response to the need for formal methods of dealing with public international organizations. The law was passed with the thought in mind that public international organizations, and the employees thereof, should be granted privileges and immunities similar to, but less extensive, than the privileges and immunities granted to foreign governments and diplomats. This reflected

the fact that public international organizations were not foreign governments but were public organizations often carrying on work or research of a governmental nature.

The use of the IOIA in the three Customs Regulations mentioned above has expanded beyond the concept of the law as passed in 1945. It is not a necessary practice to grant employees of public international organizations the right to import nonconforming motor vehicles or boats for personal use. The IOIA was intended to extend privileges and immunities only to official acts of the organization and its employees.

The State Department has advised Customs that the current exemption program is not required by any international law and is no longer warranted. Currently, over 15,000 staff employees of public international organizations can import nonconforming motor vehicles, motor vehicle engines, boats, and related pieces of equipment for personal use. The State Department's Office of Foreign Missions has informed Customs that this number of exemptions has extended well beyond the intended limits of the program. Also contributing to the proposal to eliminate the exemption program is the unnecessary harm inflicted on the U.S. environment by these nonconforming imports and the unnecessary risk they pose to the public safety. Accordingly, §§ 12.73, 12.80, and 12.85 would be amended by removing the exemption available to employees of public international organizations.

To accommodate the rare instance in which a binding international commitment requires that such an exemption be granted, or special circumstances exist, it is proposed to add language to §§ 12.73, 12.80, and 12.85, permitting the State Department to designate individuals who are not foreign government diplomatic personnel, but who are otherwise entitled to import nonconforming motor vehicles, motor vehicle engines, boats or related equipment.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject

to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

EXECUTIVE ORDER 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

DRAFTING INFORMATION

The principal author of this document was John Doyle, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 12

Air pollution control, Marine safety, Motor vehicle pollution, Motor vehicle safety, Motor vehicles.

PROPOSED AMENDMENTS

It is proposed to amend Part 12, Customs Regulations (19 CFR Part 12), as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read as follows:

AUTHORITY: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnote 11, Tariff Schedules of the United States), 1624.

§ 12.73 also issued under 19 U.S.C. 1484, 42 U.S.C. 7522, 7601;
§ 12.85 also issued under 19 U.S.C. 1623, 46 U.S.C. 4302, 4306, 4310.
All other statutory authority remains unchanged.

2. It is proposed to revise § 12.73(b)(5)(iv) to read as follows:

§ 12.73 Federal motor vehicle air pollution control.

* * * * * * *

(b) * * *
(5) * * *

(iv) Such motor vehicle or motor vehicle engine is not covered by a certificate of conformity with Federal motor vehicle emission standards, and the importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S., or is a member of the personnel of a foreign government on assignment in the U.S., or other individual who comes within the class of persons for whom free entry of motor vehicles has been authorized by the Department of State in accordance with general principles of international law, and that such vehicle or engine will not be sold in the U.S.; or

* * * * * * *

3. It is proposed to revise § 12.80(b)(1)(vi) to read as follows:

§ 12.80 Federal motor vehicle safety standards.

* * * * * * *

(b) * * *

(1) * * *

(vi) The importer or consignee is a member of the armed forces of a foreign country on assignment in the U.S., or a member of the personnel of a foreign government on assignment in the U.S., or other individual who is within the class of persons for whom free entry of vehicles has been authorized by the Department of State in accordance with general principles of international law, is importing the vehicle or equipment item for purposes other than resale; and a copy of his official orders, if any, is attached to the declaration (or, if a qualifying member of the personnel of a foreign government on assignment in the U.S., the name of the Embassy to which he is accredited is stated on the declaration).

* * * * * * *

4. It is proposed to revise § 12.85(c)(5) to read as follows:

§ 12.85 Coast Guard boat and associated equipment safety standards.

* * * * * * *

(c) * * *

(5) *Products owned by certain foreign governments.* In the case of an importer or consignee employed in one of the capacities set forth in this subparagraph, a declaration will be filed in accordance with paragraph (d) of this section. The declaration shall state that the importer or consignee is either a member of the armed forces of a foreign country on assignment in the U.S., is a member of the personnel of a foreign government on assignment in the U.S., or other individual who comes within the class of persons for whom free entry of boats has been authorized by the Department of State in accordance with general principles of international law, and that he is importing the product for purposes other than resale.

* * * * * * *

ALFRED R. DE ANGELUS,
Acting Commissioner of Customs.

Approved: January 22, 1986.

FRANCIS A. KEATING II,
Assistant Secretary of the Treasury.

[Published in the Federal Register, February 7, 1986 (51 FR 4760)]

U.S. Court of Appeals for the Federal Circuit

(Appeal No. 85-2166)

ON MOTION

ALLIED CORP., APPELLANT *v.* U.S. INTERNATIONAL TRADE COMMISSION, APPELLEE, NIPPON STEEL CORP. AND NIPPON STEEL U.S.A., INC., INTERVENORS, HITACHI METALS, LTD. AND HITACHI METALS INTERNATIONAL, LTD., INTERVENORS, VACUUMSHMELZE GMBH, INTERVENOR

William J. Gilbreth, Fish & Neave, of New York, New York, represented appellant.

Phyllis N. Smithey, Lyn M. Schlitt and *Michael P. Mabile,* Office of the General Counsel, U.S. International Trade Commission, represented appellee.

Robert T. Tobin, Kenyon & Kenyon, *Thomas L. Creel, Daniel J. Plaine, Jane C. Luxton, Jeanne E. Davidson, Bradley E. Lerman,* and *Mark D. Whitener,* Steptoe & Johnson, of Washington, D.C., represented intervenor Nippon Steel, et al.

Steven H. Noll, Hill, Van Stanten, Steadman & Simpson, of Chicago, Illinois, *John D. Simpson, Tom M. Schaumberg* and *Alice A. Kipel,* Plaia & Schaumberg, of Washington, D.C., represented intervenor Vacuumschmelze GmbH.

Thomas J. Macpeak, Sughrue, Mion, Zinn, Macpeak & Seas, of Washington, D.C., and *Waddell A. Biggart, Alan J. Neuwirth* and *Richard A. Nescon,* Kassel, Neuwirth & Geiger, of New York, New York, represented intervenor Hitachi.

Appealed from: U.S. International Trade Commission.

(Appeal No. 85-2166)

ON MOTION

ALLIED CORP., APPELLANT *v.* U.S. INTERNATIONAL TRADE COMMISSION, APPELLEE, NIPPON STEEL CORP. AND NIPPON STEEL U.S.A., INC., INTERVENORS, HITACHI METALS, LTD. AND HITACHI METALS INTERNATIONAL, LTD., INTERVENORS, VACUUMSCHMELZE GMBH, INTERVENOR

Before MARKEY, *Chief Judge,* FRIEDMAN and DAVIS, *Circuit Judges.*

ORDER

This is a joint motion of ITC and the intervenors (movants) for a decision on certain jurisdictional questions before review on the merits. Movants argue that the court is without jurisdiction and the appeal should be dismissed because it was filed out of time.

Allied filed its notice of appeal on February 13, 1985. The appeal is from a July 6, 1984 determination of the International Trade Commission (ITC) adopting the findings of an administrative law judge (ALJ) regarding the importation of certain amorphous metal alloys alleged to infringe three of Allied's patents. The ALJ determined that two of the patents were invalid, but that the third patent was valid and infringed by the imported articles.

On October 15, 1984, the ITC issued an order excluding those articles which infringed the one patent held valid and infringed. On December 17, 1984, the Presidential review period for that exclusion order expired. Because Allied prevailed in respect of that patent and the exclusion order, it could not appeal from that order. Similarly, if the President had disapproved the exclusion order, Allied would have had no basis for appeal, the President's action having rendered the ITC determination of no force or effect. *Duracell, Inc.* v. *U.S. International Trade Commission,* 718 F.2d 1578 (Fed. Cir. 1985).

The ITC argues that its July 6, 1984 order adopting the ALJ's determination constituted the final order from which Allied was required to appeal. The only determination by which Allied is aggrieved is that holding two of its patents invalid. That determination was final as of July 6, 1984, there being no provision for Presidential review, or for other administrative proceedings, following a determination that does not lead to an exclusion order.

Allied asserts that a § 337(c) proceeding is a single entity and that it was waiting for expiration of the Presidential review period. The argument is without merit. *Cf. Federal Trade Commission* v. *Minneapolis-Honeywell Regulator Co.,* 344 U.S. 206 (1952). Further, it is contrary to Allied's interests here. As above indicated, Allied was without an appeal from the determination that its one patent was valid and infringed, regardless of the result of Presidential review. The July 6, 1984 determination, on the other hand, meant that the goods challenged by Allied as infringements of its other two patents could continue to be imported. Allied has cited no reason for continuing to suffer importation of those goods for seven months, while awaiting an action of the President that could not possibly effect its right to appeal from the July 6, 1984 determination.[1]

[1] Intervenors whose products were subject to the exclusion order could not appeal the July 6, 1984 determination that the one patent was valid and infringed, the finality of that determination being dependent on Presidential action. If the President declined to disapprove the exclusion order, that order would then become final and subject to timely appeal by intervenors.

Allied's notice of appeal was filed more than 60 days after the July 6, 1984 determination of the ITC *and* more than 60 days after the November 11, 1984 reimposition by Congress of the 60-day limitation. Technical Amendments to the Federal Court Improvements Act of 1982, Pub. L. No. 98–620, § 413, 98 Stat. 3362 (1984) (the Act). Allied's appeal is thus untimely and must be dismissed.[2]

Accordingly, IT IS ORDERED THAT:

The joint motion for determination of whether this court has jurisdiction of the appeal is granted, the question is answered in the negative, and the appeal is dismissed.

Dated: January 21, 1986.

For the Court.

HOWARD T. MARKEY,
Chief Judge.

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[2] In *Union Manufacturing Co., Inc.* v. *U.S. International Trade Commission*, Appeal No. 85-2473, this court held that the 60-day limitation of the Act should not be mechanically applied to causes of action arising prior to its effective date where, as in that case, an appellant had been actively pursuing its rights in other courts. However, as indicated in the text, Allied has demonstrated no basis on which its delay might be justified.

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